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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1991

Addendum

REPUBLIC OF KOREA

[31 July 1991]

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INTRODUCTION

1. The Government of the Republic of Korea submits the following initial report, which relates to the progress made in the guarantees of the fundamental human rights provided for in the International Covenant on Civil and Political Rights, and in the enjoyment of these rights, to the Secretary-General of the United Nations in accordance with article 40 of the said Covenant.

I. GENERAL COMMENTS

A. Constitutional protection of civil and political rights

2. The first Constitution of the Republic of Korea was proclaimed on 17 July 1948 and there were several amendments to the Constitution until February 1988 when the present Constitution of the Sixth Republic (hereinafter referred to as "the Constitution") was proclaimed. As the supreme law of the State, the Constitution, which was adopted upon the desire and consensus of the Korean people, has enormously contributed to the political, economic and social development of the Republic of Korea, and to the protection of human rights of the Korean people.

3. The Constitution guarantees all the rights provided for in the International Covenant on Civil and Political Rights (hereinafter referred to as "the Covenant"). Article 10 of the Constitution provides, "All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals." In addition, Article 37(1) of the Constitution guarantees the fundamental human rights in an explicit and comprehensive manner stating that "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution." In compliance with these provisions of the Constitution, the laws and regulations contain more detailed provisions in order to guarantee the rights which are recognized by the Covenant.

4. Generally, the fundamental human rights protected by the Constitution are equally guaranteed to all foreigners in the Republic of Korea. All rights under the Covenant, with the exception of the rights which require Korean nationality as a condition for enjoyment, such as the right to vote or to hold public office, are equally guaranteed to all foreigners residing or temporarily staying in the Republic of Korea. The Constitution provides that the fundamental human rights may be restricted by law only when necessary "for national security, the maintenance of law and order, or for public welfare" (Art. 37(2), para. 1). Concepts such as "national security, the maintenance of law and order or public welfare" imply limited cases where restrictions on the rights are inevitable in order to resolve conflicts among individuals in the enjoyment of those rights and to guarantee the human rights of each individual to the fullest extent. With regard to restrictions on the fundamental human rights, the Constitution prescribes strict limitations on the exercise of the Government's power, in order to prevent an abuse of power, by providing that "any such restrictions may not infringe upon the essential aspects of the fundamental human rights" (Art. 37(2), para. 2).

B. Relationship between the Covenant and the domestic laws of the Republic of Korea

5. Since Article 6(1) of the Constitution provides that "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea," the Covenant, which was ratified and promulgated by the Government with the consent of the National Assembly, has the same effect as domestic laws without the enactment of separate domestic legislation.

6. The Korean Government has concluded that the Constitution does not conflict with the Covenant. However, the Government has made reservations on articles 14, paragraph 5, 22 and 23, paragraph 4, of the Covenant which were considered to be incompatible with traditional Korean customs, and the statutory framework and practice based upon the crucial policy objectives of the Republic of Korea. (The reservation on article 23, paragraph 4, was withdrawn on 15 March 1991 when the relevant domestic law was amended to conform with the Covenant.)

C. Authorities having jurisdiction over human rights

7. The Constitution guarantees all citizens the right of access to the courts (Arts. 27 and 101). The judicial power is vested in the Supreme Court, the highest court of the State, and in other lower courts (Art. 101(2)). In order to secure independent and just trials, the Constitution provides that "the judges shall rule independently under their own conscience and in accordance with the Constitution and law" (Art. 103).

8. In addition, the Constitution has a provision relating to the organization and competence of the Constitution Court (Arts. 111 to 113) which has jurisdiction over the following matters:

(a) Upon a request by the courts, the adjudication of the constitutionality of a law;

(b) Impeachment;

(c) Dissolution of a political party;

(d) Dispute between State agencies, between State agencies and local governments and between local governments;

(e) Petitions prescribed by law relating to the Constitution.

In adjudicating the above matters, the Constitution Court has been performing an important and effective role in checking the abusive acts of the Government, securing the independence of the Judiciary and protecting fundamental rights.

9. The Government of the Republic of Korea has a "Human Rights Division" in the Ministry of Justice. The Division has full competence over human rights matters. The Human Rights Division is responsible for, inter alia, "the protection of human rights, legal aid, enhancement of the respect for law and

order, and affairs relating to private human rights organizations". The Ministry of Justice is planning to reinforce the Division in order to handle more effectively human rights matters which are presently handled by several Government authorities.

10. In the Republic of Korea, the prosecutor has a duty to protect human rights. As a part of the measures to protect and enhance the fundamental human rights of citizens, the prosecutor establishes a human rights consultation centre in every district attorney's office and its branch offices. The prosecutor also designates a prosecutor in charge of human rights matters to gather information on the instances of human rights violations, and to handle the criminal cases, petitions or secret investigations relating to human rights violations.

11. The Government of the Republic of Korea has several legal aid programmes which provide free legal advice, aid for legal costs and an attorney to those who are unable to obtain legal remedies because they are ignorant of the law or cannot afford the legal costs. The Korea Legal Aid Corporation, established on 1 September 1987 and subsidized by the Government, had dealt with 782,684 cases of legal consultation and 64,328 cases of legal aid by the end of 1990.

12. In the Republic of Korea, there are numerous private organizations for the protection of human rights. The Korean Federal Bar Association is the most prominent of these organizations.

D. Remedies available to an individual who claims an infringement of his rights

13. The Constitution and other relevant laws provide numerous remedies to an individual who claims an infringement of his/her fundamental human rights by Government agencies or by an individual.

14. Remedies available in case of an infringement of the rights by Government agencies are as follows:

(a) Petition: Generally, an individual who claims an infringement of his fundamental rights may obtain remedies by petitioning for the annulment or nullification of the administrative actions, or for the dismissal of the relevant officials under Article 26 of the Constitution. Matters for which petitions are available are prescribed in Article 4 of the Petition Act, and the petitioning method and procedure are prescribed in Articles 6 to 8 of the said Act.

(b) Appeals: An individual, whose rights or interests have been violated by an illegal or unjust administrative action, or by the exercise or non-exercise of Government power by administrative agencies, may use the administrative appeals procedure in order to achieve the proper operation of the administration. (Administrative Appeals Act, Art. 1.)

(c) Litigation: Article 107(2) of the Constitution provides that the courts shall adjudicate the constitutionality or legality of administrative actions. The details of the litigation procedure are prescribed in the Administrative Litigation Act.

(d) Review of administrative decrees and regulations: In order to ensure that administrative decrees and regulations do not violate the fundamental rights of the citizens, Article 107(2) of the Constitution provides courts with the power to review administrative decrees and regulations. The review may be conducted by the courts when their constitutionality or legality is at issue in a trial. The Supreme Court has the power to make a final review.

(e) Remedies of the Constitution Court: In case of an infringement of fundamental rights by an unconstitutional administrative action, an individual may obtain remedies through a petition to the Constitution Court (see para. 8 (e)).

(f) Remedies available in case of an infringement of fundamental human rights and compensation for damages: An individual, whose fundamental human rights have been infringed by the unlawful action of a public official in the course of his official duties, may claim compensation for damages from the State under the procedures prescribed by the National Compensation Act (Constitution, Art. 29(1)). In case an arrested criminal suspect is not indicted due to lack of evidence, or an accused person placed under detention is acquitted by the court, such persons may claim compensation from the State (under the procedures prescribed by the Criminal Compensation Act (Constitution, Art. 28)).

15. Remedies available in case of an infringement of fundamental human rights by an individual are as follows:

(a) Complaint or accusation: In case of an infringement of fundamental rights by an individual, the person claiming the infringement is entitled to seek the withdrawal of the illegal act from the criminal investigation authorities, i.e., the prosecutor's office and the police. For example, through a complaint or accusation with respect to an unlawful detention or an infringement of property rights, an individual can initiate an investigation or prosecution of the above unlawful acts. In addition to a complaint or accusation, the laws of the Republic of Korea provide for other procedures for requesting an adjudication (Code of Criminal Procedure, Arts. 260-262), the details of which will be explained later (see para. 135).

(b) Civil lawsuit for compensation: An individual, who claims an infringement of his fundamental rights by another person, can also file a lawsuit to seek compensation for damages.

(c) Remedies available to the victims of a crime: The Constitution provides for State aid to the victims of a crime, by stipulating that "Citizens, who have suffered bodily injury or death due to criminal acts of others, may receive aid from the State under the conditions as prescribed by law" (Art. 30). The State Aid for Victims of Crime Act, promulgated on 1 July 1988, sets forth detailed methods and procedures for the payment of State aid.

16. Further explanations of the above-mentioned measures to protect human rights, and numerous remedies for the infringements of the rights, will be provided in "Information concerning the application of articles 1 to 27 of the Covenant".

E. Other measures to ensure the implementation of the provisions of the Covenant

17. By acceding to the Covenant, the Republic of Korea has expressed its will to participate actively in the concerted international efforts for the protection of human rights. Korea's accession will also contribute to the promotion of respect for human rights in Korea. The Republic of Korea has acceded to the Optional Protocol with a view to enabling its citizens to submit a complaint to the Human Rights Committee. This clearly demonstrates the commitment of the Government of the Republic of Korea to promote respect for and observance of human rights.

18. The Government of the Republic of Korea has made every effort to make the contents of the Covenant fully understood by the Korean people. Before Korea's accession to the Covenant, the Ministry of Justice held a symposium on the Covenant where people from academic and legal circles participated in a fruitful discussion of the conflicts between the Covenant and domestic laws. The symposium enhanced public awareness of the Covenant and accelerated the process of accession. With the accession to the Covenant, the Ministry of Justice has translated into Korean the Covenant, several initial reports submitted by the States Parties to the Covenant, in accordance with article 40 thereof, and selected decisions of the Human Rights Committee. With the publication and distribution of these translated materials, education on human rights was provided to all levels of public officials - the prosecutors, police, and other law enforcement officers - in order to protect human rights in accordance with the spirit of the Covenant.

19. Every year, the Government of the Republic of Korea designates the week which includes "Human Rights Day" (10 December) as "Human Rights Week" and holds numerous events such as a commemorative ceremony and symposiums to promote the respect for human rights.

20. The Government will do its utmost to inform every Korean of the provisions and spirit of the Covenant so that human rights are respected by all individuals. In this respect, there is a positive trend for lawyers as well as agencies such as the Supreme Court and the Constitution Court, to solve legal problems by applying the Covenant in litigation.

II. INFORMATION CONCERNING THE APPLICATION OF ARTICLES 1 TO 27 OF THE COVENANT

Article 1

21. The Preamble and Article 5(1) of the Constitution state that the Republic of Korea shall contribute to a lasting world peace and the common prosperity of mankind and shall renounce all aggressive wars.

22. Under the principle of international peace as embodied in its Constitution, the Republic of Korea accepts the principles and the provisions of the Charter of the United Nations and recognizes that all nations have the right of self-determination and to pursue freely their political, economic, social and cultural development. The Republic of Korea has based its foreign policy on the principles enshrined in the Constitution and the Charter of the United Nations and has made every effort for the complete realization of these principles.

23. With respect to situations where the right of self-determination has not yet been respected or where racial discrimination still persists, the position of the Republic of Korea may be summarized in the following paragraphs.

The Middle East and the question of Palestine

24. The Republic of Korea believes that the question of Palestine should be settled in a peaceful manner by respecting the legitimate rights of the Palestinians and supports a prompt resolution of the question of Palestine in accordance with Security Council resolutions 242 (1967) and 388 (1973).

25. Since 1950, the Republic of Korea has made, and continues to make, voluntary contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The Republic of Korea also contributed to the Arab Student Aid International (ASAI) from 1981-1988. In addition, since 1978, the Korean Government has participated in activities held under the auspices of the United Nations such as the commemoration of the International Day of Solidarity with the Palestinian People.

26. In response to United Nations Security Council resolution 688 (1991), the Republic of Korea also made a voluntary contribution of $US 300,000 on 17 April 1991 to the United Nations Relief Activities for Kurdish and other Iraqi Refugees.

Apartheid in South Africa

27. The Republic of Korea, in the firm belief that apartheid constitutes a crime against the conscience and dignity of mankind, reaffirms its support for the efforts of the South African people and the international society to establish, through peaceful means, a united, non-racial and democratic society in South Africa in which all people, irrespective of race, colour, sex or creed, will enjoy the same fundamental human rights. In this regard, the Government of the Republic of Korea welcomes recent developments in South Africa which will foster a climate fully conducive to a peaceful settlement of the problems through negotiation. The Korean Government

believes that these developments are positive steps toward the elimination of all forms of racial discrimination and the establishment of a united, democratic and non-racial society in South Africa. The Korean Government, as an expression of its support for and solidarity with the peoples of South Africa, has provided, since 1978, financial assistance to the United Nations Trust Funds and Programmes for Southern Africa and is fulfilling its pledge of $US 1 million, pledged in 1987, to the Action for Resisting Invasion, Colonialism and Apartheid Fund. The Republic of Korea fully supports the noble and untiring efforts of the Special Committee against Apartheid and other relevant organs of the United Nations to achieve the lofty goal of eliminating all forms of racial discrimination and apartheid.

28. The Republic of Korea established full diplomatic relations with Namibia at ambassadorial level on 21 March 1990 and opened its embassy in Windhoek on 18 June 1990.

Article 2

29. Respect for the dignity of an individual and non-discrimination are fully reflected in the Constitution. The Preamble of the Constitution states, "... to afford equal opportunities to every person in all fields" and Article 11(1) states, "All citizens shall be equal before the law and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status." Non-discrimination is guaranteed in all aspects of the citizens' lives (Constitution, Art. 11(1)).

Political sphere

30. All citizens shall enjoy, without any discrimination, the equal right to vote and to hold public office (Constitution, Arts. 41(1), 67(1) and 116(1)).

Economic sphere

31. Unequal treatment in employment, wages and taxation is prohibited. The right of women to work is guaranteed and they shall not be subjected to unjust discrimination in employment, wages or working conditions (Constitution, Art. 32(4)).

32. Article 5 of the Labour Standard Act provides, "An employer shall not discriminate against the employees on account of sex and shall not discriminate with respect to the terms of employment on the basis of nationality, religion or social status."

33. Article 1-2 of the Employment Security and Promotion Act provides that "No person shall be discriminated against with respect to employment assistance, occupational guidance and relations for reasons of sex, religion, social status or marital status." Under Article 17-3 of the said Act, the Minister of Labour is responsible for the enforcement of the non-discrimination principle. The Minister shall endeavour to increase the availability of occupational and employment opportunities for women, shall assist in developing occupations suitable for middle-aged, elderly or disabled persons and shall assist them in finding employment in the above occupations.

34. Articles 4(3) and (4) of the Basic Vocational Training Act states, "... vocational training for women, the middle-aged, the elderly and the disabled shall be considered as important", and Article 11 of the Labour Union Act provides, "A member of a union shall not be discriminated against under any circumstances on account of race, religion, sex, political party or social status."

Cultural sphere

35. All citizens shall have an equal right to receive an education corresponding to their abilities (Constitution, Art. 31(1)). However, reasonable discrimination on the basis of their abilities is not prohibited.

Social sphere

36. Any discrimination with respect to residence, travel or access to public facilities is prohibited. Any discrimination between legitimate and illegitimate children, or between men and women in marriage or family life is also prohibited (Constitution, Art. 36(1)).

Equal treatment and welfare policy for disabled persons

37. The Government of the Republic of Korea has enacted the "Welfare Law for Persons with Disabilities" in order to guarantee equal treatment of disabled persons. The said law prohibits any discrimination against persons with disabilities in employment, education, the grant of a licence, residence, access to public facilities, transportation and in all other social activities.

38. In order to ensure that disabled persons enjoy equal opportunities in political, economic, social and cultural activities, the Korean Government has developed and carried out numerous welfare programmes, including: the grant of a monthly living allowance to persons with severe disabilities who are considered incapable of earning a certain level of income; tax exemptions on automobiles or rehabilitation appliances; and income tax deduction for persons with disabilities.

39. Article 38 of the Welfare Law for Persons with Disabilities provides that national or local governments may establish welfare institutions for disabled persons who suffer difficulties in coping with everyday life. As of the end of 1990, 156 welfare institutions had been established and have been supporting such persons in need. Furthermore, the 12 welfare centres for rehabilitation and vocational training of the disabled have been modernized to provide more opportunities for participation in leisure and social activities.

40. The Minister of Health and Social Affairs, mayors and governors may instruct the relevant public officials to inspect the operational condition, records and other documents of the welfare institutions, or may require the founders and managers of the welfare institutions to submit reports concerning the managements of the institutions to the relevant authorities (The Welfare Law for Persons with Disabilities, Arts. 41-42).

Problems with the implementation of the policy on persons with disabilities

41. Due to Confucian tradition and customs, there are some Koreans who consider it a dishonour to have a disabled family member and thus tend to conceal that fact. This tendency creates an obstacle in establishing and implementing the policy on the disabled. It can however be overcome by the expansion of welfare programmes and by the enhancement of public awareness of this Korean tendency. The Government of the Republic of Korea is determined to guarantee fully the enjoyment of fundamental human rights by the disabled.

Equal protection of the law

42. The principle of equal protection of the law is observed in all legislative, judicial and administrative activities of the State. Under Articles 107(1) and 111(1) of the Constitution, the Constitution Court adjudicates whether a law violates the Constitution and, also whether a law violates the principle of equal protection of the law.

43. Laws and administrative actions which were held unconstitutional by the Constitution Court due to the violation of the equal protection principle are as follows:

(a) Laws which were held unconstitutional:

(i) The Bond Provision of the "Special Measures Act Relating to Overdue Loans of Financial Institutions" (89-HUNGA-37, 96 of 24 May 1989). Article 5-2 of the Special Measures Act was held unconstitutional because it unlawfully restricts, in favour of the financial institutions, the right to appeal the decision to allow a public auction in the case of a financial institution applying for an auction.

(ii) Deposit Money Provision of the "National Assembly Members Election Act" (88-HUNGA-6 of 8 September 1989). Articles 33 and 34 of the National Assembly Members Election Act were declared to be unconstitutional since they discriminate against non-party candidates in favour of party candidates in violation of the principle of equal protection of the law.

(iii) Restrictions on the place of practice in the "Lawyers Act" (89-HUNGA-102 of 28 November 1989). Article 10(2) and (3) of the Lawyers Act, which contain certain restrictions with respect to the place of practice of lawyers who have practised law for less than 15 years, violates the "equal protection principle" and "the right to choose jobs" provided for in the Constitution.

(iv) Special Corporate Liquidation Provision of the "Special Measures Act Relating to Overdue Loans of Financial Institutions" (89-HUNGA-98, 101, 105 of 25 June 1990). Article 7-3 of the Special Measures Act violates the equal protection principle and was thus held to be unconstitutional because, notwithstanding the provisions of the Corporate Liquidation Act, it allows financial institutions to sell the property of a bankrupt company by auction for collection of the debt.

(v) Preference of the National Tax in the "Basic National Tax Act" (89-HUNGA-95 of 3 September 1990). Article 35(1) item 3 of the Basic National Tax Act was held unconstitutional because it provides that national tax shall have priority over any security rights established less than one year after the tax payment due date.

(b) Constitutional petitions:

(i) Non-prosecution (89-HUNMA-10 of 14 July 1989). In case a prosecutor decides not to prosecute a criminal case due to his poor investigation, the decision must be revoked because it constitutes a violation of the victim's right of equal protection.

(ii) Military prosecutor's decision to suspend the indictment (89-HUNMA-56 of 27 October 1989). Rightful resistance to a superior officer's unjust harsh actions does not constitute the offence of resisting a lawful order. Therefore, the military prosecutor's decision to suspend, in violation of the right of equal protection, the indictment of the petitioner was held unconstitutional.

(iii) Preference in the employment of teachers in the Educational Public Official Act (89-HUNMA-89 of 8 October 1990). Article 11(1) of the Educational Public Official Act, which gives preference to graduates from national teachers colleges over graduates from private teachers colleges in the employment of teachers, violates the equal protection principle and is thus unconstitutional.

(iv) Provision relating to the legal clerk examination of the "Enforcement Regulation of the Legal Clerk Act" (89-HUNMA-178 of 15 October 1990). Article 3(1) of the Enforcement Regulation of the Legal Clerk Act violates the equal protection principle because it prescribes that the legal clerk examination shall be held only when the administrative director of the court determines that additional legal clerks are needed.

(v) Prohibition of local councilmen from having an additional job in the Local Councilmen Election Act and the Local Autonomy Act (90-HUNMA-28 of 11 March 1991). Article 28(1) item 7 of the Local Councilmen Election Act and Article 33(1) item 6 of the Local Autonomy Act, which prohibit the directors and officers of the Agricultural Cooperative, Fisheries Cooperative and Livestock Cooperative from concurrently holding the office of local councilmen, violate the right to hold public office and the equal protection principle and were thus held unconstitutional.

(vi) Deposit Money System in the Local Councilmen Election Act (91-HUNMA-21 of 11 March 1991). The deposit money system contained in Article 36 of the Local Councilmen Election Act infringes upon the right to hold public office and the right of equality.

44. Fundamental human rights, with the exception of the rights which require Korean nationality as a precondition of enjoyment, such as the right to vote or to hold public office, are equally guaranteed to foreigners in the Republic of Korea regardless of their nationality. The Republic of Korea ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 5 December 1978 and has submitted reports six times in accordance with Article 9 of the Convention.

Remedies available in case of an infringement of rights

45. The laws of the Republic of Korea provide effective remedies to an individual whose rights and freedoms have been infringed by Government agencies or by individuals.

Infringement of the rights by Government agencies

46. Administrative remedies

(a) Petition: In the case of an infringement of fundamental rights by Government agencies, under Article 26 of the Constitution an individual may obtain remedies by petitioning for the nullification or annulment of the relevant administrative actions, or for the removal or punishment of the relevant officials. Article 4 of the Petition Act enumerates the matters for which petitions are available, and the petitioning procedures are provided for in Articles 6 through 8 of the said Act. No person shall be discriminated against or shall suffer any disadvantages on the grounds that the person has filed a petition (Petition Act, Art. 11).

(b) Administrative adjudication: an individual, whose rights or interests have been violated by an illegal or unreasonable administrative action or an exercise or a non-exercise of the Government power by the administrative agencies, may obtain remedies by applying for an administrative adjudication (Administrative Adjudication Act, Art. 1). Article 107(3) of the Constitution provides, "An administrative appeal may be conducted as a procedure prior to a judicial trial. The procedure of administrative appeals shall be determined by law and shall be in conformity with the principles of judicial procedures."

(c) Criminal compensation: In cases where a criminal suspect or an accused person, who has been placed under detention is not indicted or acquitted by a court, the person is entitled to claim compensation from the State under the conditions prescribed by law (Constitution, Art. 28). The Criminal Compensation Act prescribes detailed rules on the compensation for victims of unlawful detention.

47. Court remedies

(a) Administrative litigation: The Supreme Court shall have the power to make a final review of the constitutionality or legality of administrative decrees, regulations or actions (Constitution, Art. 107(2)). The Administrative Litigation Act provides remedies to an individual whose rights or interests have been violated by an illegal administrative action or an exercise or non-exercise of Government power by administrative agencies.

(b) Review of administrative decrees and regulations: Article 107(2) of the Constitution protects fundamental rights by providing the Supreme Court with the power to review the constitutionality or legality of administrative decrees and regulations.

(c) Compensation: In cases where a person has sustained damages due to an unlawful act committed by a public official in the course of his official duties, such a person may claim compensation from the State under the National Compensation Act, which was enacted in accordance with Article 29(1) of the Constitution.

48. Remedies provided by the Constitution Court

(a) Review of the constitutionality of a law: The Constitution Court shall adjudicate the constitutionality of a law upon the request of a court (Constitution, Art. 111(1) item 1). If the constitutionality of a law is at issue in a trial, the court in charge of the trial (including the military court) shall request the Constitution Court to adjudicate the constitutionality of the law. In cases where a party to a trial requests an adjudication of the constitutionality of a law, the court shall request, upon its decision, an adjudication by the Constitution Court (Constitution Court Act, Art. 41(1)). Any law or provisions thereof held unconstitutional shall be null and void from the date of the decision. However, any unconstitutional law or provisions thereof relating to punishment shall be null and void retroactively (Constitution Court Act, Art. 47(2)). One may apply for a retrial in cases where a conviction was based upon the law or provision thereof as held unconstitutional.

(b) Petitions relating to the Constitution: The Constitution Court shall adjudicate the petitions relating to the Constitution (Constitution, Art. 111(1) item 5). Any person whose fundamental rights guaranteed by the Constitution have been infringed by the exercise or non-exercise of Government power, may request the Constitution Court to adjudicate a constitutional petition (Constitution Court Act, Art. 68(1)). A ruling in favour of the constitutional petition shall bind all the agencies of the State and the local governments (Constitution Court Act, Art. 75(1)). In cases where the Constitution Court rules in favour of the constitutional petition against non-exercise of Government power, the relevant administrative agencies shall take new action in accordance with the decision (Constitution Court Act, Art. 75(4)). In addition, the Constitution Court may nullify the exercise of Government power by which fundamental rights were infringed (Constitution Court Act, Art. 75(3)).

49. Remedies provided by special human rights protection institutions

In addition to the above-mentioned remedies through legal procedures, an individual may seek remedies through human rights consultation or legal aid provided by special human rights protection institutions.

(a) Korean Legal Aid Corportion: was established under the Legal Aid Act in order to protect fundamental human rights and to contribute to the promotion of legal welfare by providing legal aid to those who are either in economic difficulty or ignorant of the law (Legal Aid Act, Art. 1).

(b) The Korean Federal Bar Association: has been providing legal aid since June 1985 through the establishment of the Legal Aid Committee and the Legal Aid Fund (Lawyers Act, Art. 67).

Infringement of rights by an individual

50. Complaint and accusation

(a) A person who has been injured in consequence of an offence, and the legal representative, spouse or relatives of the said person many file a complaint in order to seek the prosecution of the offender (Code of Criminal Procedure, Arts. 223, 225(1) and (2), 226). Any person other than the offender and those with the right to file a complaint, who believes that an offence has been committed, may file an accusation (Code of Criminal Procedure, Art. 234(1)).

(b) A complaint or an accusation shall be filed with a prosecutor or a police officer in writing or orally (Code of Criminal Procedure, Art. 237(1)).

(c) Investigation period: In order to provide prompt remedies, Article 257 of the Code of Criminal Procedure prescribes that if a prosecutor investigates a crime on a complaint or an accusation, he shall determine whether or not to indict the case within three months of the filing of the complaint or accusation.

(d) Notice to complainant, accuser or suspect: In cases where a prosecutor decides not to file an indictment with respect to a case based on a complaint or accusation, or to withdraw the indictment or to send the case to another prosecutor's office, the prosecutor shall inform the complainant or accuser of such a decision in writing within seven days after such a disposition has been made (Code of Criminal Procedure, Art. 258(1). In cases where a prosecutor decides not to file an indictment or to send the case to another prosecutor's office, the prosecutor shall promptly inform the suspect of such a decision (Code of Criminal Procedure, Art. 258(2)).

(e) Notice of the reasons for the decision not to file an indictment: In cases where a prosecutor decides not to file an indictment with respect to a case based upon a complaint or accusation, the prosecutor, upon the request of the complainant or accuser, shall inform the complainant or accuser of the reasons therefore in writing within seven days after the decision (Code of Criminal Procedure, Art. 259).

(f) Appeal and reappeal: Any complainant or accuser, who is dissatisfied with a prosecutor's decision not to file an indictment, may appeal the decision to the chief prosecutor of the competent High Prosecutor's Office (Prosecutor's Office Act, Art. 10(1)). Any appellant who is dissatisfied with a decision to reject the appeal referred to in Article 10(1) of the Prosecutor's Office Act, may reappeal the decision to the Attorney General. In cases where the chief prosecutor or the Attorney General determines that the appeal or reappeal is well-founded, the decision shall be rectified (Prosecutor's Office Act, Art. 10(2)).

Remedies available to a victim of a crime

51. Under Article 30 of the Consititution, any citizen who has suffered a bodily injury or death due to criminal acts of others may receive aid from the State under the conditions prescribed by law. In accordance with the provision of the Consititution, the State Aid Act for Victims of Crime prescribes detailed rules for the payment of State aid. In cases where a victim of a felony, such as murder or robbery, is unable to obtain compensation because the criminal is missing or is unable to compensate for the damages, the State protects the interests of the victim by paying State aid to the victim or the bereaved family.

Article 3

Enhancement of Women's Status

52. Until the establishment of the Government of the Republic of Korea in 1948, women had to endure sexual discrimination due to prevalent Confucian tradition. However, the Constitution which was proclaimed on 17 July 1948, guarantees the equality of men and women and thus allows for women to participate equally in social activities. In accordance with the equal protection principle of the Constitution, the Government of the Republic of Korea has implemented various measures in order to eliminate the discrimination against women and as a result, the status of women experienced a revolutionary change in political, economic, social and cultural areas.

53. As a result of strenuous efforts over 30 years, women have achieved the revision of the discriminatory family law (December 1989), the enactment of the Gender-equal Opportunity Employment Act, which came into force in April 1988, and the establishment of the Vocational Training Centre for Women, which has been accepting applicants since March 1991. The Governnent and the competent authorities continue to search for measures to stimultate women's participation in the major public vocational training courses.

Constitutional Guarantees

54. Since its promulgation in 1948, the Constitution has upheld the equality of men and women as a supreme principle of the State, and this is reflected in various provisions of the Constitution. The preamble to the Constitution states, "... to destroy all social vices and injustice, ... and to afford equal opportunities to every person and to provide for the fullest development of the individual capabilities in all fields, including political, economic, social and cultural life by further strengthening the basic free and democratic order..." and thus emphasizes equal treatment and equal opportunity for all citizens.

(a) All citizens shall be assured of human worth and dignity and shall have the right to pursue happiness (Constitution, Art. 10).

(b) All citizens shall have the right to equal protection of the laws and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status (Constitution, Art. 11).

(c) Women shall not be subjected to unjust discrimination in terms of employment, wages of working conditions (Constitution, Art. 32) and the State shall endeavour to promote the welfare and rights of women (Constitution, Art. 34).

(d) In addition, the Government shall endeavour to promote equality between men and women in marriage and family life (Constitution, Art. 36).

55. The Government of the Republic of Korea has exerted every effort to enact or modify the relevant laws so as to guarantee the equality of men and women and to enhance women's status, and ratified the Convention on the Elimination of All Forms of Discrimination against Women on 27 December 1984.

Status of women under labour laws

56. In accordance with the equal protection principle of the Constitution, Article 5 of the Labour Standards Act provides "an employer shall not discriminate against employees with regard to the conditions of employment on the basis of sex". In addition, Article 11 of the Labour Union Act provides, "a member of a labour union shall not be discriminated against under any circumstances on account of sex". The Equal Opportunity Employment Act is designed to rectify discriminatory practices in employment between men and women and to enhance the social stutus of women.

The status of women under the criminal law

57. The sole provision relating to the equality of men and women under the criminal law is Article 241 (adultery) of the Criminal Code, which renders equal punishment to the offenders regardless of their sex.

Authorities in charge of women's affairs

58. On 25 February 1988, the office of the Minister of Political Affairs (2) was created and a women was appointed as the Minister. The office devises and implements policies relating to women.

59. The Women's Welfare Division in the Ministry of Health and Social Affairs, and the Women's and Minor's Labour Division in the Ministry of Labour are also in charge of matters relating to women. The Women's Welfare Division devises an overall plan for the social welfare of women and the Women's and Minors' Labour Division is in charge of improving the employment conditions of working women. In addition, the Ministry of Labour has a Women's Affairs Guidance Officer for the special protection of working women.

60. Family welfare Bureaux were established in 15 local administrations in 1988 and women were appointed as directors. In order to promote the social welfare of women, these bureaux maintain close relationship with the Women's Welfare Division in the Ministry of Health and Social Affairs.

61. The National Committee on Women's Policies was established under the control of the Prime Minister on 8 December 1983. As the supreme Government Committee concerned with policies relating to women, it devises the basic policy and supervises the activities of other related Government authorities.

This Committee has up to 25 members who are experts on women's issues and the relevant Ministers. The Prime Minister is the chairman of the Committee.

62. Other Government committees concerned with policies relating to women are the Committee on Working Women, the Committee to Provide Guidance to Women in Prostitution and the Council on Guidance to Women.

Increase of childcare subsidies

63. The Government, realizing that childcare usually prevents married women from working, has established 360 national and public childcare facilities subsidized by the Government, 39 private childcare facilities, 20 office childcare facilities, 1,500 home placement facilities, which between them take care of approximately 48,000 children.

64. The Government enacted the Childcare Act on 14 January 1991. The important provisions of the said Act are as follows:

(a) The State and local governments shall be responsible for the protection of children who are less than six years old (Art. 3).

(b) The owner of a workplace greater than the prescribed size shall establish an office childcare facility. If the facility cannot be established for unavoidable reasons, it must be jointly established with another workplace or the owner shall pay a childcare allowance to the employees (Art. 7(3)).

(c) The State or local governments may subsidize the costs of childcare, such as the cost of establishing and operating the childcare facilities (Art. 22).

(d) There shall be a reduction and/or exemption of taxes from the legal guardian's cost of childcare for children less than six years of age and for the cost incurred by an owner of a workplace for the establishment and operation of the childcare facility.

65. The Government is planning to establish 1,440 childcare facilities for 17,000 children from low-income families as prescribed by law by 1992 and childcare facilities that can accommodate 1,025,000 children by 1995.

Mother-child health protection

66. Under the provisions of the Maternal and Child Health Act the government has improved the maternity protection services and the childcare system by establishing 81 maternal and child health centres and the Mother-Child Health Committee was established in the Ministry of Health and Social Affairs in 1987.

Sexual exploitation

67. Prostitution or other forms of sexual exploitation is prohibited by law in the Republic of Korea. Article 303 of the Criminal Code provides "a person who, through fradulent means or the power of authority, has sexual intercourse with a women under his protection or supervision by reason of business, employment or other relationship, shall be punished...". In order to

eliminate prostitution, the Government enacted the Anti-Prostitution Act in 1961 and its enforcement decree in 1969. The Act prohibits prostitution (Art. 4) and the intermediation of prostitution (Art. 6) and provides that the Government shall establish guidance centres for women in prostitution (Art. 7) and vocational training and employment guidance centres to support such women in building a new life. Prostitution is a crime under the Criminal Code.

68. The Government has established 105 consultation centres in the major cities for women in need of protection; 22 employment guidance centres offer vocational training and guidance to women in prostitution in order to support their return to a normal social life.

Social Participation of Women

69. Since the establishment of the Korean Government, women have enjoyed equal political rights with men. The Constitution provides that "all citizens shall have the right to vote under the conditions prescribed by law" (Art. 24). In addition, Article 25 of the Constitution states "all citizens shall have the right to hold public offices under the conditions as prescribed by law".

70. Women's participation in the State's policy decisions has increase, but the level of participation is still unsatisfactory. There have been 61 women n in the National Assembly so far; 16 members from "the local constituency" and the other 45 members from "the national constituency". Currently, there are 6 women out of a total 299 members in the National Assembly.

71. As of December 1989, there were 181,083 female public officials (23.7 per cent) out of a total of 764,563 officials, 111,831 of the female officials (61.5 per cent) were teachers. The Public Official Employment Regulation, amended by Presidential Decree No. 12730, has deleted the previous provision, which required a separate testing system for men and women, and thus prohibits sexual discrimination in the employment of public officials. Furthermore, since 1991 "education on the equality of men and Women" has been adopted as a required subject in the training programme for public officials.

72. The field of education is the dominant centre of women's social participation. As of April 1990, there were 159,003 female teachers which is 41.33 per cent of all teachers, and the number of female teachers continues to rise.

73. With the increase of members in the political parties, the number of female members has also increased. With regard to the composition of the executive committee of the main political parties, the ruling Democratic Liberal Party has 1 female consultant and 73 female committee members out of 1,698 standing committee members. The opposition New Democratic Pararty, has 2 female members out of 70 members of the executive committee, and the People's Party has 2 female members out of 20 members of the standing committee.

74. The Government guarantees equal treatment of men and women in the eligibility for and score evaluation of the Korean Bar Examination, which confers the licence to practise law in the Republic of Korea. However, the Confucian custom of sexual discrimination has hindered women from entering the

legal field. With the social changes arising out of modernization and industrialization, women's participation in the legal field has gradually increased. As of 31 March 1991, there were 35 female judges, 2 female prosecutors and 21 female lawyers.

75. There are 2,694 female workers in the press which constitutes 12 per cent of all workers in the mass media. They work as reporters, directors, scriptwriters and administrators.

76. Article 21 of the Constitution, along with other provisions, guarantees that all citizens shall enjoy freedom of assembly and association. Many Korean women participate in the activities of private associations.

Education of Women

77. According to Article 31(1) of the Constitution, all citizens shall have an equal right to receive an education corresponding to their abilities. Furthermore, all citizens who have children shall be responsible for their elementary education, at least, and other education as provided by law (Constitution, Art. 31(2)).

78. During the course of industrialization, the percentage of school attendance for women and the percentage of enrolment at the institutions of higher education for women have increased tremendously.

79. Since primary school education was made compulsory in 1948, over 99 per cent of children have attended primary school. As of 1990, the percentage of female students entering high school was 94.96 per cent and the percentage of male students was 96.34 per cent. The percentage of high school female graduates entering college was 32.36 per cent and the the percentage for male students was 33.89 per cent in 1990. In 1988, female students constituted 35.56 per cent of all enrolled college students.

80. Since 1989, the discriminatory descriptions and subjects in the textbooks have been corrected in accordance with the principle of equality between men and women. In addition, efforts have been made to eliminate sexual discrimination in education.

Status of Women in Labour Matters

81. The laws of the Republic of Korea guarantee the equality of men and women with respect to employment. The Constitution provides that all citizens shall have the right and duty to work (Art. 32(1) and (2)) and that all citizens shall have the freedom to choose their occupations (Art. 15). The State shall enact laws to guarantee that the standards of employment protect the dignity of the workers and to guarantee reasonable wages for workers (Constitution, Art. 32(1)). Article 6-2 of the Equal Opportunity Employment Act, amended on 1 April 1989, provides that equal wages shall be paid for equal work, irrespective of sex.

82. Due to rapid industrialization since the 1960s, the number of working women has greatly increased. As of 1990, 7,474,000 women out of 15,897,000 women over 15 years of age were working, making the percentage of working women 47 per ccent. Most of the 8,423,000 women who were not working were housewives or students.

83. There are many opportunities for Korean women to receive vocational training. The Government enacted the Basic Vocational Training Act to promote vocational training for women. As of 1989, 63,429 trainees have received vocational training in 167 subjects, such as electronics and industrial arts, in 295 institutions, i.e, national and local training centres and in-office training centres. To improve the training for women, the Government is planning to establish a vocational training centre for women by 1991.

Status of women in other fields

84. The Constitution guarantees the equality of men and women in accordance with the equal protection principle. Thus, men and women enjoy equal rights with respect to family allowances, bank loans, mortgages and financial credit evaluations. Moreover, women have the right to participate in all cultural activities including sports.

85. Article 23(1) of the Constitution guarantees the right of property to all citizens, and under the relevent laws of the Republic of Korea men and women have equal legal competence concerning property.

Status of women in marriage and family life

86. The Constitution states that individual dignity and equality of the sexes shall be the basis of marriage and family life (Art.36(1)).

Revision of the Discriminatory Family Law

87. As a result of the struggle of Korean Women over three decades, the revision of the discriminatory Family Law was passed by the National Assembly in December 1989. The amendments to the Family Law are considered fairly satisfactory because they reflect most women's requests. The amendments may be summarized as follows:

(a) Adjustment of the Confucian family head system in order to eliminate the discrimination against women under the grand family regime. (The deletion of Arts. 797-799 of the old Civil Code).

(b) Equality in the scope of relatives through extension of the scope of relatives to blood relatives within eighth degree of relationship of both husband and wife (Civil Code, Art. 777).

(c) Improvement of the inheritance system to allow the successors to inherit equal shares irrespective of sex, age and marital status (Civil Code, Art. 1009).

(d) Establishment of the right of both husband or wife to seek a division of the joint property on the basis of his or her contribution to the formation of the property (Civil Code, Art. 839-2).

(e) Establishment of equal parental rights of husband and wife (Civil Code, Art. 909) and the revision of the previous law, which granted fostering and education of a child to his or her father in case an agreement on fostering and education has not been reached, in order to require that the Family Court decide the fostering and education issue (Civil Code, Art. 837).

Article 4

88. In case of an emergency that threatens the existence of the State, the President, in order to cope with the emergency situation, may issue emergency orders, may take financial and economic emergency actions and orders, and may proclaim martial law (Constitution, Arts. 76-77). These emergency powers of the President derive from the duty and responsibility of the President, under Article 66(2) and (3) of the Constitution, to safeguard the independence, territorial integrity and continuity of the State, to protect the Constitution, to pursue the peaceful unification of the homeland and to overcome the crisis of the State.

89. The current Constitution has deleted the emergency powers of the President under the former Constitution, and has vested the President with only the power to issue emergency orders, to take financial and economic emergency actions and orders, and to proclaim martial law (Constitution, Art. 76). Article 37(2) of the Constitution provides that the freedom and rights of citizens may be restricted by law only when absolutely necessary for national security, the maintenance of law and order, or public welfare, and that such restriction may not infringe upon the essential aspects of fundamental rights. This provision also applies to any restrictions on fundamental rights under the emergency powers of the President. Therefore, Articles 76 and 77 of the Constitution are consistent with the derogating measures in case of public emergencies pursuant to article 4, paragraph 1 of the Covenant.

90. The detailed descriptions of the President's emergency powers are as follows:

(a) Constitution, Article 76

(i) Paragraph 1: In time of internal turmoil, external menace, natural calamity or a grave financial or economic crisis, the President may take in respect to them the minimum necessary financial and economic actions or issue orders having the effect of law, only when it is required to take urgent measures for the maintenance of national security or public peace and order, and there is no time to await the convocation of the National Assembly.

(ii) Paragraph 2: In case of major hostilities affecting national security, the President may issue orders having the effect of law, only when it is required to preserve the integrity of the nation, and it is impossible to convene the National Assembly.

(b) Constitution, Article 77, paragraph 1: When it is required to cope with a military necessity or to maintain the public safety and order by mobilization of the military forces in time of war, armed conflict or similar national emergency, the President may proclaim martial law under the conditions prescribed by law.

91. Restrictions on fundamental rights under the emergency orders are allowed only by measures designed for the maintenance of national security. Restrictions under the financial or economic emergency orders are allowed only on the financial or economic emergency measures, and the restrictions under martial law are allowed only on certain fundamental rights or powers prescribed in Article 77(3) of the Constitution - the necessity for warrants, freedom of speech, press, assembly and association or the powers of the Executive or Judiciary.

92. Restrictions on fundamental rights are subject to the limitation imposed by Article 37(2) of the Constitution. In addition, the emergency measures are effective only during the period when the survival of the State is at stake.

Control on the exercise of emergency powers

93. The National Assembly, the Courts, and the Constitution Court control the exercise of emergency powers.

(a) Financial and economic emergency actions and orders

(i) The National Assembly: The President shall promptly notify the National Assembly of any emergency orders or financial and economic emergency actions or orders issued or taken by him and shall obtain its approval (Constitution, Art. 76(3)).

(ii) The Court: Even if the emergency orders or the financial and economic orders have been approved by the National Assembly, the Court may still request a decision of the Constitution Court when the constitutionality of these measures is at issue in a trial (Constitution, Art. 107(1)); the Court still has the power to review the constitutionality or legality of these measures (Constitution, Art. 107(2)).

(iii) The Constitution Court: In cases where the emergency orders or the financial and economic emergency orders have legal effect due to the approval of the National Assembly, the Constitution Court may still adjudicate the constitutionality of these orders upon the request of the courts (Constitution, Art. 111(1) item 1). In addition, the Constitution Court may adjudicate the constitutionality of the financial and economic emergency actions, which were approved by the National Assembly, in the case of a Constitutional petition relating thereto (Constitution, Art. 111(1) item 5).

(b) Martial law: the President shall notify the National Assembly of a proclamation of martial law without delay (Constitution, Art. 77(4)). In the case that the majority of the members of the National Assembly request the lifting of martial law, the President shall comply (Constitution, Art. 77(5)).

94. The above provisions relating to restrictions on fundamental rights in the case of an emergency do not explicitly refer to the absolute fundamental rights of article 4 of the Covenant. In terms of Korean legal context, it is understood that absolute fundamental rights fall under "the essential aspect of the freedom or right" referred to in Article 37(2) of the Constitution, and thus cannot be restricted under any circumstances.

95. In the case of an exercise of these emergency powers, the Secretary-General of the United Nations shall be notified of the steps and grounds for the exercise. Similar notice shall be rendered when the emergency situation ends. Since the promulgation of the current Constitution, these emergency powers have never been exercised in the Republic of Korea.

Article 5

96. The Government of the Republic of Korea does not interpret the Covenant so as to destroy the rights and freedoms recognized by the Covenant or to restrict the rights more severely than as provided for in the Covenant. On this point, the Constitution states that "All citizens shall be assured of human worth and dignity ... and it shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals" (Art. 10) and that "the freedoms and rights of citizens shall not be neglected on the ground that they were not enumerated in the Constitution (Art. 37(2))."

97. No derogation or limitation of fundamental human rights recognized by the Constitution, but not referred to in the Covenant, is allowed on the grounds that they are not stated in the Covenant. For instance, Article 13(3) of the Constitution provides that no citizen shall suffer unfavourable treatment on account of an act committed by a relative.

Article 6

Paragraph 1: the right to life

98. The right to life provided for in article 6, paragraph 1 of the Covenant is not subject to any restrictions even during a State emergency since it is the supreme fundamental human right. Although the right to life is not explicitly stated in the Constitution, it is implicitly guaranteed by Article 10 of the Constitution which provides for the respect of human dignity and by Article 12(1) which provides for personal liberty.

99. With respect to the right to life, the Supreme Court has stated that "Life once lost is never restored. It is absolute and cannot be exchanged for anything in the world. The life of a man is more precious and solemn than the entire world. It is the basis of the solemn existence of mankind". Thus the Court has clearly indicated that the right to life is the supreme fundamental right (Supreme Court Decision, 1969.9.19, 67 Do 988).

100. Every individual, regardless of citizenship, has this inherent right to life. Not only life after birth, but also life of a foetus is protected under the laws of the Republic of Korea (Criminal Code, Chap. 27, the crimes of abortion, Arts. 269-270).

Paragraph 2: death penalty

101. In the Republic of Korea, criminal punishment, including the death penalty, is enforced in accordance with the following provisions and a decision of a competent court:

(a) Constitution, Article 13(1): "No citizen shall be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed.".

(b) Constitution, Article 27(1): the right to be tried in conformity with the law by judges qualified under law.

(c) Criminal Code, Article 1(1): "The criminality and punishability of an act shall be determined by the law prevailing at the time of the commission of that act.".

(d) Criminal Code, Article 41: types of punishment i.e., death penalty, penal servitude, imprisonment, deprivation of qualification, suspension of qualification, fine, detention, minor fine, confiscation.

(e) Code of Criminal Procedure, Art. 321(1): pronouncement of punishment.

(f) Code of Criminal procedure, Art. 459: "Except as otherwise provided in this Code, a decision shall be executed after it has become final.".

As a result of the above rules and procedures, any arbitrary deprivation of life by the State is strictly prohibited.

102. Articles 250-256 of the Criminal Code provides for the punishment of murderers and thus strictly prohibits any arbitrary deprivation of life by an individual.

103. The Korean laws provide for the death penalty in the Criminal Code and the other related regulations. Crimes subject to the death penalty are strictly limited to crimes that threaten the very existence of the State such as an insurrection, heinous crimes such as a murder and other designated felonies. Even with respect to crimes subject to the death penalty, a fair trial by an independent, competent court, the presumption of innocence of the accused, representation by a lawyer, the right of appeal and the right of retrial are fully guaranteed under the following provisions, and due process of law are strictly observed:

(a) The right to be tried by a judge designated by law (Constitution, Art. 27(1));

(b) The right to a prompt trial (Constitution, Art. 27(3));

(c) The presumption of the innocence of the accused (Constitution, Art. 27(4));

(d) The right to receive assistance from a counsel or a counsel assigned by the State (Constitution, Art. 12(4));

(e) The right to appeal (Code of Criminal Procedure, Art. 338 para. 1);

(f) The right to a retrial (Code of Criminal Procedure, Art. 429);

(g) Execution of the death penalty (Code of Criminal Procedure, Art. 465).

104. The Special Deliberation Council on the Revision of the Criminal Law, established 21 June 1985, has studied the issue of abolishing the death penalty. The Council has come to the conclusion that it is premature to eliminate the death penalty in view of the criminal situation in Korea where heinous crimes are being committed, such as the recent incident of a gang of burglars breaking into a peaceful home and raping a woman in the presence of her husband and family. However, the Council also concluded that it would be better to limit the crimes that are subject to the death penalty in consideration of the spirit of the Constitution to respect human dignity and worth, and the international trend toward the abolition of death penalty.

105. Revisions to the Criminal Code are being made in order to limit the crimes which are subject to the death penalty. A new provision, which requires careful consideration when pronouncing the death penalty, has been added to the Criminal Code. In addition, a proposal to eliminate the death penalty for five crimes for which punishment is augmented for certain results, such as causing the death of or injury to a person by setting fire to a dwelling structure, is under consideration.

106. The death penalty was eliminated from 15 provisions of the Special Criminal Act, i.e., the Act Concerning Additional Punishment for Specified Crimes and the Act Concerning Additional Punishment for Specified Financial Crimes.

107. The average period of time between the final death penalty sentence and execution from 1981 to 1990 was as follows:

(a) Total: 82 cases;

(b) Shorter than 1 year: 9 cases (11.0 per cent);

(c) 1-2 years: 31 cases (37.8 per cent);

(d) 2-3 years: 20 cases (24.4 per cent);

(e) 3-4 years: 13 cases (15.8 per cent);

(f) Longer than 4 years: 9 cases (11.0 per cent).

108. A retrial of a death sentence judgement was held three times in 1986 and twice in 1987 and 1988. There was no retrial in 1989 and 1990. In none of these cases was the death sentence judgement reversed.

109. There is a Constitutional petition case pending in the Constitution Court, which contends that Article 338 of the Criminal Code (death penalty for robbers) and Article 57 of the Penal Administration Act (execution of death sentence) are unconstitutional because they violate human worth, dignity and personal liberty.

Abortion

110. Under chapter 27 of the Criminal Code, it is a crime to have or commit an abortion. However, the Maternal and Child Health Act allows abortions for medical, eugenic and moral reasons (Art. 14). With regard to the abolition of crimes of abortion, the Special Deliberation Council on the Revision of the Criminal Law has concluded overwhelmingly to sustain those provisions criminalizing abortion.

Paragraph 4

111. Under Article 26 of the Constitution, and Articles 4, 6 and 7 of the Petition Act, a person who has been sentenced to death may petition for an amnesty or commutation. The President may grant an amnesty or commutation under Article 79 of the Constitution and Articles 2, 3, 5 and 8 of the Amnesty Act. However, a general amnesty can be granted only with the consent of the National Assembly. Of all criminals sentenced to death between 1951 and 1990, one was granted an amnesty and 35 had their sentences commuted.

Paragraph 5

112. The minimum age for the death sentence was raised from 16 to 18 on 31 December 1988 through the revision of the Juvenile Act in conformity with article 6 of the Covenant. Under Article 59 of the Juvenile Act, the death sentence of a juvenile who is less than 18 years of age when the crime is committed, shall be changed to 15 years of penal servitude. Furthermore, Article 469 of the Code of Criminal Procedure provides that the execution of a pregnant woman who is condemned to death shall be stayed until delivery.

Differential treatment of the convicted persons under the death sentence

113. Article 13 of the Penal Administration Act provides that a person sentenced to death shall be committed to a detention place for unconvicted detainees. The detention of persons sentenced to death is to secure the execution of the death penalty, and thus it differs from the detention of unconvicted persons and the execution of the imprisonment of the convicted persons.

114. Article 170 of the Enforcement Decree of the Penal Administration Act prescribes that the provisions relating to the unconvicted detainees shall apply equally to the convicts who received the death sentence. According to this provision, convicts under the death sentence enjoy equal humanitarian treatment as provided to the unconvicted detainees based on respect for human

dignity. In case of request by a convict under the death sentence, various services to relieve the agony and anguish arising from the death sentence are rendered through enlightenment by religious workers and benevolent volunteers.

Maternal and child health care (MCH)

115. In accordance with Article 7 of the Maternal and Child Health Act, the State and local governments have established maternal and child health institutions, (12 Comprehensive Maternal and Child Health Centres, 81 Maternal and Child Health Centres and Child Health Clinics). Under Article 10 of the said Act, maternal and child health institutions have been providing regular medical examinations and immunizations to pregnant women, new-born babies and infants or, when deemed necessary, arranging health worker home visits and health treatment for them.

116. For the proper health care of pregnant women, regular medical examinations (at least 7 times) are provided and the maternal and child health institutions take care of them during delivery. In addition, mothers and new-born babies are properly taken care of by the maternal and child health institutions.

117. The Korean Government has been issuing a Maternal and Child Health Handbook to pregnant women, which explains the MCH programme and records of MCH services provided by the State.

118. The Government has established 81 MCH Centres as of December 1990, in secluded areas and the Offices provide medical care, i.e., delivery assistance, first-aid treatment and family planning.

119. To cut down the infant mortality rate, the Korean Government is implementing various MCH programmes such as regular medical examination, nutritional guidance and health education for pregnant women. In addition, medical examinations and proper treatment for infants between six months and one to two years of age are being provided.

120. The Korean Government has been providing health care services to 1,323,000 children under five years of age (U5's) namely 33 per cent of all the U5's in the Republic of Korea. Under Article 8 of the Maternal and Child Health Act, the Government provides free health care service to pregnant women, usually from low-income families, if the pregnant woman or her guardian so wishes. Vaccination is not covered by the medical insurance to which all Korean people have been entitled since July 1989. Thus, the Government provides, without charge, the cost of vaccination for 70 per cent of all children. In the Republic of Korea, children are vaccinated against tuberculosis (94 per cent), diphtheria, polio and tetanus (97 per cent), polio (96 per cent) and measles, mumps and rubella (89 per cent).

121. With these efforts by the Government, the U5 mortality rate has decreased as follows:

U5 mortality rate

Year	1970	1984	1986	1989
U5 mortality rate (per thousand U5s)	51.0	15.7	12.5	11.0

Organ transplants

122. Article 103 of the Civil Code prohibits any organ transplants that violate good morals and social order. With advances in medical technology, some organ transplants have been performed after the formal and complete consent of the donor or his family. According to a Korean Medical Association report, 2,040 kidney transplants were performed from 1969 to 1989.

Transplantation of an organ from a patient in a state of brain-death

123. According to the Supreme Court precedent in terms of "the heart and lung cease theory", the transplantation of an organ from a patient in a state of brain-death and whose heart and/or lungs still function constitutes a murder under Article 250 of the Criminal Code. Even an organ transplant with the consent of the patient or his family constitutes the crime of murder upon request or with consent (Criminal Code, Art. 252).

124. However, the recognition of brain-death as legal death may contribute to saving another life by means of an organ transplant and to mitigating the mental and economic burdens of the patient and the family by terminating the meaningless treatment. Therefore, some people are seeking the recongition of brain-death as legal death.

Measures and practices to prevent and control communicable diseases

125. In order to prevent and control communicable diseases and protect human rights of patients, communicable diseases are classified as first, second and third class communicable diseases. The Communicable Diseases Prevention Act provides the following:

(a) State and local authorities establish medical treatment facilities specialized in communicable diseases and pay the costs of preventing communicable diseases and of treating first class communicable diseases;

(b) People infected with first class communicable diseases or some of the third class diseases shall be treated in isolation (Communicable Diseases Prevention Act, Art. 29, its Enforcement Decree, Art. 5, Enforcement Regulation, Art. 16);

(c) Patients with first or third class communicable diseases may be temporarily prohibited from working in restaurants, bars, hotels, etc. (Communicable Diseases Prevention Act, Art. 30, Enforcement Regulation, Art. 17);

(d) Patients with communicable diseases shall not enter public gatherings or other places where they may transmit the disease (Communicable Diseases Prevention Act, Art. 31).

126. The isolation of patients with communicable diseases is intended to facilitate treatment of the patients in an efficient and effective manner. In practice, the consent of the patient, or his family is required before the patient is isolated. The clause that prevents patients from entering public places has never been applied.

AIDS prevention and control

127. The Government has maintained the minimum regulations relating to AIDS prevention and control in order to protect the human rights of persons with AIDS/HIV and to prevent further transmission.

Those who fall under the following categories are subject to the protective measures by the Government upon a strict evaluation for the public interests by the Protection Review Committee (AIDS Prevention Act, Art. 14 and its Enforcement Decree, Art. 15):

(a) Person with HIV who works or is likely to work at a place, the employees of which are required to take a sexually transmitted disease examination;

(b) Person with HIV with a risk of spreading the infection;

(c) Person with HIV who has no one to depend on and who is deemed to be in need of protection, or person with HIV who requires protection in the protection facilities.

Since the first person with HIV was discovered in 1985, no protective measures have been applied to the 138 persons with HIV.

Article 18 of the AIDS Prevention Act prohibits the person with HIV from working in restaurants, bars, hotels, etc. Employees of these establishments areas, under the provisions of the relevant laws, are obliged to have a periodic sexually transmitted disease check-up. The Government has been granting subsidies to those infected people who have difficulty in earning a living.

Convention on the Prevention and Punishment of the Crime of Genocide

128. On 14 October 1950, the Republic of Korea acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force on 12 January 1951.

Article 7

Prohibition of torture and other inhumane treatments

129. The provisions in the first sentence of article 7 of the Covenant are also reflected in the domestic laws, such as the Constitution and the Criminal Code. The above Korean laws use a variety of expressions, such as torture, intimidation and other harsh treatment. Taken as a whole, these terms correspond to the same kind of treatment expressed in the Covenant.

130. Under the Constitution, all citizens shall be assured of human worth and dignity (Art. 10) and no citizen shall be tortured or be compelled to testify against himself in a criminal case (Art. 12(2)). In cases where a confession is deemed to have been made against the defendant's will due to torture, violence, intimidation, unjustifiably prolonged arrest, or deceit etc., such a confession shall not be admitted as evidence of guilt, nor shall the defendant be punished by reason of such a confession (Art. 12(7)). The above provisions prohibit torture and harsh treatment, and ensure that suspects will not be subject to such inhumane treatment by prohibiting the admission of confession derived from torture and other harsh treatment.

131. There are numerous laws in the Republic of Korea prohibiting any kind of torture and inhumane treatment by the police and public officials. Article 123 of the Criminal Code prohibits a public official from abusing his official authority in order to cause a person to perform an act which the person has no duty to do, or to obstruct the person from exercising his rights. Article 124 of the said Code provides that a person who performs or assists in activities concerning judgement, prosecution, law enforcement or other functions involving restraint of the human body, shall be punished in the case that the person commits the arrest or detention of an individual by abusing his official authority. Article 125 provides that a person, described in Article 124, shall be punished in the case that he commits an act of violence or cruelty against a suspect or any other person in the performance of his official duties.

132. A person who has sexual intercourse with a female held in his custody according to law shall be punished more severely than in the case of normal maltreatment (Criminal Code, Art. 303, para. (2)). Article 4-2 of the Act Concerning Additional Punishment for Specified Crimes prescribes increased punishment for a person who causes injuries or death to an individual in consequence of committing the crimes stipulated in Articles 124 or 125 of the Criminal Code.

133. The prosecutor must inspect the detention places more than once every month in order to investigate whether an illegal detention has been made or not (Code of Criminal Procedure, Art. 198-2). In accordance with the spirit of the above provision, and in order to eliminate cruelty against a person during the course of an investigation, the prosecution strictly guides and supervises the police and the investigators to ensure that they follow the relevant legal procedures.

134. Article 309 of the Code of Criminal Procedure provides that any confession extracted by torture, violence, threat, unjustifiably prolonged detention or which is suspected to have been made involuntarily, shall not be admitted as evidence of guilt.

Request for ruling

135. In the case that the prosecutor decides not to prosecute a case based on a complaint or an accusation with respect to the crimes prescribed in Articles 123 through 125 of the Criminal Code, the person who filed the complaint or accusation may apply to the competent High Court for a ruling on the prosecutor's decision in accordance with the procedures prescribed in Articles 260 through 265 of the Code of Criminal Procedure which are designed to ensure the actual enforcement of the above provisions of the Criminal Code. In the case that the High Court decides that the case shall be committed to the competent district court for a trial, public prosecution shall be deemed to have been instituted in the case and a special prosecutor appointed by the competent district court shall be in charge of prosecuting the case.

Prohibition of torture and cruelty committed in the performance of official duties

136. Law enforcement officers are strictly educated never to inflict torture in the performance of their official duties and a Constitution course is a compulsory subject of the educational programme for all Government officials. As the Prosecutor General instructed, 9,303 law enforcement officers and 5,059 members of the prosecutor's office staff have been educated on the above subject in 222 and 410 courses respectively from 1 January to 31 December 1990.

137. The detainees are equally entitled to file a complaint or an accusation with respect to any incidence of torture, violence or cruelty. In the case that they are victims of the above-mentioned unlawful acts, they may obtain compensation in accordance with the relevant provisions of the Civil Code and if any unlawful acts were committed in the performance of official duties, they shall be entitled to claim just compensation from the State. Twenty-nine public officials have been prosecuted for inflicting torture: nine police officers in 1986, five police officers and four prison officers in 1987, four police officers in 1988, five police officers in 1989, and two police officers in 1990. In the case that prosecution of public officials is accompanied by a claim for damage compensation from the State or a claim based on the Civil Code, a guilty verdict may be accompanied by a court's decision to grant compensation for damages.

138. By denying the admissibility of a confession made against a defendant's will due to torture in the following instance, the Supreme Court has actually prohibited torture, violence, intimidation and unduly prolonged arrest which are committed in order to obtain a confession from a suspect or the accused. In case the accused had made a confession against his will due to torture during investigation by police and the accused made the same confession under coerced state of mental oppression during investigation by the prosecutor, the fact that no torture was committed during the investigation by the prosecutor does not preclude the conclusion that confessions were involuntary and thus inadmissible (Supreme Court decision, 13 October 1981, 81-TO-2160).

139. Article 10 of the Constitution protects the right of an individual to not be subjected to a medical or scientific experiment without his consent. This right is provided for in the second sentence of article 7 of the Covenant. A medical or scientific experiment carried out without the individual's consent constitutes the crime of bodily injury and the crime of violence (Criminal Code, Arts. 257, 260). In the spirit of international efforts to protect human rights, the Government is seriously considering the accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, from 1988 to 1990, the Government contributed $US 15,000 to the United Nations Voluntary Fund for Victims of Torture, to participate in the concerted efforts of the international community to fight against torture and other harsh treatment or punishment.

Article 8

140. The Constitution does not explicitly prohibit slavery. However, according to Article 10 of the Constitution, there is no doubt that slavery is unlawful. Article 10 of the Constitution protects human dignity, fundamental human rights and the right to pursue the free development of oneself.

141. In accordance with the above provision, the Criminal Code provides that a person, who forces, through violence or intimidation, another to perform an act which the latter does not have a duty to do, or who kidnaps another, or buys or sells another for the purpose of transporting him out of the Republic of Korea, shall be subject to penal servitude (Arts. 324, 288, 289, 292, 293). Furthermore, if the kidnapper under the above provisions kills or causes the death or the injury of the kidnapped, the person shall be subject to increased punishment (Act Concerning the Additional Punishment for Specified Crimes, Art. 5-2).

142. Article 12(1) of the Constitution provides that no person shall be subject to involuntary labour except as provided by law and through lawful procedures. In accordance with this provision, the Labour Standards Act prohibits forced labour and excessive work (Arts. 6, 55-57) and the Anti-Prostitution Act prohibits prostitution and enticement or intermediation thereof and provides for penal servitude or penalty for those who violate the provisions of the said Act (Arts. 4-6, 14-17).

143. The Employment Security and Promotion Act provides that a person, who engages in a placement service or the recruitment of employees using violence, threat, illegal confinement etc., shall be subject to penal servitude or a fine (Art. 29).

144. Under the Child Welfare Act, a provincial governor who finds that a person with parental authority abuses that authority, commits misconduct or cannot exercise the authority for a significant reason whatsoever, may request from a court, the forfeiture of the parent authorities. And a person, who makes his child beg for food or who begs for food by using the child, shall be subject to penal servitude or a fine (Arts. 15, 18, 34). In addition, any legal act for the purpose of committing slavery shall be void under Article 103 of the Civil Code.

145. With respect to imprisonment with hard labour set forth in paragraph 3(b) of the Covenant, the Criminal Code provides for penal servitude with a certain amount of labour (Art. 41) and a substitute term of lock-up at a place of hard labour in the case that a fine is not paid in full (Art. 70).

146. With respect to labour that is not compulsory labour under paragraph 3(c) of the Covenant, or alternative service for conscientious objectors to military duty, the Constitution provides that all citizens shall have the duty of national defense under the conditions prescribed by law (Art. 39(1)). The Supreme Court has decided that a Jehovah's Witness, who refuses the duty of national defense is subject to the punishment prescribed in the Military Service Act, and the so-called "conscientious decision" is not included in the freedom of conscience protected by Article 19 of the Constitution (Supreme Court decision, 22 July 1969, 69-TO-934).

Article 9

Right to liberty and prohibition of arbitrary arrest and detention

Paragraph 1

147. Article 12(1) of the Constitution provides "All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated except as provided by law. No person shall be punished or placed under preventive restrictions except as provided by law and through lawful procedures". In addition, Article 12(3) provides that a warrant issued by a judge upon the request of a prosecutor shall be presented in the case of an arrest, detention, seizure or search.

148. In accordance with these provisions of the Constitution, the Code of Criminal Procedure prescribes strict requirements for arrest and detention. The Court may detain the accused when there are resonsable grounds to suspect that the person has committed a crime and he has no fi ed dwelling or there are reasonable grounds to suspect that the person may destroy evidence or that he may escape (Code of Criminal Procedure, Art. 70). In order to place the accused under detention, a warrant containing the following items must be issued and presented to the accused: the name and address of the accused, description of the crime, essential facts of the charge, the place of detention, the date of issue, the effective period of the warrant, a statement that after the lapse of the effective period the warrant may not be executed and must be returned to the court of issuance, and the name and seal of the judge issuing the warrant (Code of Criminal Procedure, Arts. 73, 75, 85).

149. Under the Code of Criminal Procedure, a prosecutor or a police officer may detain a suspect with a warrant issued by a competent court upon a request by the prosecutor (Art. 201). However, in the case that there is reasonable ground to suspect that the suspect committed a crime punishable by death, imprisonment for life or imprisonment of three or more years, and there are reasonable grounds to believe that the suspect may destroy evidence or escape, and it is not possible to obtain a warrant due to the urgent situation (Art. 206), or in the case that the suspect committed a crime in the presence of a police officer (Arts. 211-214), the suspect may be detained without a warrant. In case of detention without a warrant, the prosecutor or police

officer must obtain a warrant within 48 hours or 72 hours from the time of arrest (Art. 207). In case the warrant is not obtained within the time period, the suspect shall be released immediately (Arts. 207 and 213-2).

150. Although the Code of Criminal Procedure strictly requires a warrant for arrest, it contains no provisions requiring a warrant for the temporary detention of a suspect. Therefore, it has been pointed out that there is a discrepancy between the norms of the Code of Criminal Porcedure and the actual practices of investigatory agencies, in that the agencies sometimes detain a suspect who is willing to accompany the officer to the police station, and request the issuance of a warrant for detention after conducting an investigation. In response to the above criticism, the Government is exerting efforts to improve the situation by the following:

(a) The Police Officers' Duty Performance Act has been amended twice, on 31 December 1988 and 8 March 1991. By strictly regulating the procedures for the suspect's voluntary submission into police custody in the following way, the amended Act prevents the abuse of the suspect's voluntary submission into police custody and the human rights violations resulting therefrom: "A suspect may refuse a police officer's request for a voluntary submission into custody". (Art. 3(2)). "In the case of a suspect's voluntary submission into police custody, the police shall notify the family or close relatives of the suspect of the identity of the officer who took the suspect into custody, the place of custody and the reasons for custody, or shall allow the suspect to contact them and shall notify the suspect that he has the right to the assistance of a defence counsel." (Art. 3(5)). "In case of a voluntary submission into police custody, the police may not detain the suspect for more than six hours." (Art. 3(6)).

(b) The Government continues to search for ways to improve the entire arrest and detention system. In addition, the Government is making efforts to ensure that suspects are arrested pursuant to a warrant based upon sufficient evidence, or are arrested without a warrant only in the case of an urgent situation prescribed in the Code of Criminal Procedure.

Notification of the charge and the reasons for arrest

Paragraph 2

151. No person shall be arrested or detained without being informed of the reasons therefore and of his right to the assistance of a defence counsel. The family of a person arrested or detained, and other individuals designated by law, shall be notified without delay of the reasons for and the time and place of the arrest or detention. (Constitution, Art. 12(5)). In accordance with this provision, Article 72 of the Code of Criminal Procedure provides that the accused shall not be placed under detention unless the court has informed the accused of the facts of the alleged crime, the reasons for detention and the fact that the accused may select a defence counsel, and unless the court has given the accused the opportunity to defend himself. In addition, Article 88 of the Code of Criminal Procedure provides that the accused shall be informed of the facts concerning the charge against him and the fact that the accused may select a defence counsel.

152. The right of the accused to defend himself was reinforced by Article 87 of the Code of Criminal Procedure, as amended on 28 November 1987, which provides that in the case that the accused is detained, his defence counsel shall be notified immediately, in writing, of the reasons for the detention. (Prior to the amendment, the defence counsel was not informed of the reasons for detention and the notice was made in writing within three days from the time of detention.) The Supreme Prosecutor's Office Regulation No. 172 (3 May 1988) prescribes that the detention notification form shall contain the statement of the facts of the alleged crime, and that a copy of the warrant shall be given to the defence counsel upon the counsel's request. In the case of an urgent arrest without a warrant, the reason why it was impossible to obtain the warrant shall also be given (Code of Criminal Procedure, Art. 206(1)).

Speedy trial and restrictions on detention of the accused

153. All citizens shall have the right to a speedy trial. The accused shall have the right to a public trial without delay in the absence of any justifiable reasons (Constitution, Art. 27(3)). If a confession is deemed to have been made against the defendant's will due to an unduly prolonged detention, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession (Constitution, Art. 12(7)). Under the above-mentioned provisions, the right of an arrested offender to a speedy trial is ensured.

154. The Code of Criminal Procedure contains provisions to limit the period of detention reasonably and to allow the suspect to be released at each step of the criminal procedure as follows:

(a) The period of detention by a police officer and a prosecutor is limited to 10 days each, i.e., if a police officer arrests a suspect, the suspect shall be released if he or she is not transferred to the prosecutor within 10 days, and the suspect shall also be released if the prosecutor does not file an indictment within 10 days (Code of Criminal Procedure, Arts. 202, 203). However, detention by a prosecutor may be extended at his request only once for no longer than 10 days. In the request, the grounds for such an extension shall be stated (Code of Criminal Procedure, Art. 205). However, since violations of the National Security Law require prolonged investigation and information gathering, the detention period may be extended for a total of 50 days upon the request of a police officer (once) or a prosecutor (twice) (National Security Law, Art. 19).

(b) The period of detention and trial by a court shall not exceed two months. In the case that continuation of the detention is especially necessary, the period of detention may be extended twice by a ruling of the court and the extended period of detention shall not exceed two months (Code of Criminal Procedure, Art. 92(1) and (2)). If the trial does not come to an end during the period of detention, the accused must be released and the trial shall proceed without the detention of the accused.

(c) After the indictment, the accused in detention or the defence counsel may request release on bail (Code of Criminal Procedure, Art. 94). When request for release on bail has been made, it must be allowed except for

certain cases (Art. 95) and if a court deems it proper, it may permit release on bail ex officio (Art. 96). Recent figures on the operation of bail system are as follows:

(number of persons)

Kind / Year	Request	Permitted	Not Permitted	Bail ex officio
1989	29 801	17 664	12 137	110
1990	37 585	22 701	14 884	114

Review of the legality of detention

Paragraph 4

155. Article 12(6) of the Constitution provides that any person who is arrested or detained shall have the right to request the court to review the legality of the arrest or detention. Furthermore, Article 214(2) (Review of the Legality of Detention) and Article 214(3) (Restrictions on Re-arrest) of the Code of Criminal Procedure provide for the right to request the review of the legality of all crimes.

Criminal compensation

Paragraph 5

156. Article 28 of the Constitution provides that in case a criminal suspect or an accused person who has been placed under detention is not indicted as provided by law or is acquitted by a court, such a person shall be entitled to claim just compensation from the State under the conditions prescribed by law. The Criminal Compensation Act has been enacted in accordance with this provision. The Criminal Compensation Act, amended on 28 November 1987, has expanded the types of people who may seek compensation from the State by providing that suspects released for lack of evidence are also entitled to compensation. (Prior to the amendment, only the accused persons who had been acquitted could seek compensation from the State.) Through the revision of the Enforcement Decree of the Criminal Compensation Act, compensation of 8,000 won per day was increased to 15,000 won per day.

Article 10

Humane treatment of detained persons

Paragraph 1

157. In accordance with Article 10 of the Constitution, which guarantees respect for human rights, any person placed under detention in a prison or other detention place is accorded humane treatment based on respect for human dignity.

Treatment of the inmates

158. In accordance with the menu determined by the inmates Meal Regulation Committee composed of nutrition specialists, inmates are provided with meals of 3,150 Kcal per day (Penal Administration Act, Art. 21, its Enforcement Decree, Arts. 78-82).

159. For sanitary reasons, sufficient clothes and bedsheets, which are appropriate for the season, are supplied to and are regularly changed for the inmates (Penal Administration Act, Art. 20, its Enforcement Decree, Arts. 73, 75, 76).

160. In order to take care of the inmates, two to five doctors, who reside at detention places, provide medical treatment, regular check-ups and epidemic prevention. An inmate may also receive medical attention at his own expense upon request of a family member or defence counsel (Penal Administration Act, Arts. 25, 26, 28, 29 and its Enforcement Decree, Art. 97-105).

Segregation

Paragraph 2

161. All persons in the detention places are segregated according to their status, such as whether the person is convicted, adult or juvenile, male or female. Even within the same detention place, they are accorded separate treatment and accommodation based on the number of times the person has committed a crime, the type of crime, etc.

162. Unconvicted detainees are committed to detention houses whereas convicted detainees are committed to prisons. Even when a prison and a detention house are built in one place, unconvicted and convicted detainees are accorded separated accommodation (Penal Administration Act, Art. 2(4) and (5)). As unconvicted detainees are presumed innocent until proven guilty (Constitution, Art. 27(4)), they are entitled to prepare and submit trial documents, to communicate with their defence counsels, to have access to general information including the newspapers. Aside from the minimum duty imposed on them so as to secure order at the detention institution, they receive the same treatment as is rendered to civilians (Penal Administration Act, Arts. 45, 65).

163. Convicted persons who are 20 or more years of age shall be committed to the prisons, while convicted persons who are under 20 years of age shall be committed to juvenile correction centres. In addition, unconvicted detainees who are under 20 years of age shall be separately accommodated within detention places for unconvicted detainees (Penal Administration Act, Arts. 2-4, Art. 11, Regulation on the Separate Accommodation of Juvenile Detainees). Basically, juvenile convicts with similar problems are accommodated in the same detention places. Therefore, the juvenile correction centre located in Cheonan city accommodates first offenders and the juvenile correction centre in Kimcheon city accommodates repeat offenders.

164. Female convicts are accommodated in female prisons and unconvicted female detainees are in segregated accommodation in detention places. Female detainees are treated in a manner that is appropriate for their physical characteristics (Penal Administration Act, Arts. 4, 30).

Penitentiary system

Paragraph 3

165. The purpose of the Penal Administration Act is to reform and rehabilitate convicted persons through vocational training and the cultivation of a sound spirit and work ethic.

166. In order to return convicted persons to a normal life in society, the following education programmes are carried out in the correction facilities:

(a) Restoration of morals through education;

(b) Access to social information and intellectual education;

(c) Promotion of self-improvement through technical education and vocational training.

Education

167. Courses equivalent to elementary, middle and high school education are offered to convicted persons. Juvenile convicts may obtain education from the correspondence high school and exemplary convicts who graduated from high school may enter the correspondence university. There are also study groups for the convicts in order to enable them to pass the qualifying examination to enter schools of higher education. In addition, in order to correct the criminal tendencies of the convicts, renowned people are invited for moral education (2 weeks per year) and social education (1 week per year) (Penal Administration Act, Arts. 32, 34, its Enforcement Decree, Arts. 112, 113, Cumulative Correction Treatment Regulation, Art. 63, Regulation on the Education of the Convicts). In 1990, 9 convicts passed the qualifying examination for middle school, 177 convicts passed the qualifying examination for high school and 361 convicts obtained the certificate for high school graduation by passing the qualifying examination.

Convicts' right to communicate

168. According to Article 18 of the Penal Administration Act, an inmate may see his relatives and is permitted to see other persons when deemed necessary. However, in the interests of inmates, an inmate may see other persons except in limited cases where the meeting is deemed harmful for the rehabilitation of the inmate. An unconvicted person may be restricted from communicating with other persons by an order of the court, due to the possibility that necessary evidence may be destroyed. An inmate who has violated prison regulations and is thus under a disciplinary punishment, is prohibited from communciating with other persons (Penal Administration Act. Art. 46). Even in this case, the convict may communicate with his family members if deemed necessary. However, the right to communciate with the defence counsel is never restricted.

169. Inmates may send and receive letters without any restrictions, except in limited cases where there is a possibility that the relevant evidence may be

destroyed or where the order at the prison may be disturbed (Penal Administration Act, Art. 18, its Enforcement Decree, Arts. 54, 56, 61, Cumulative Correction Treatment Regulation, Arts. 45, 56).

170. Inmates are allowed to enjoy radio and television programmes which contribute to the restoration of their morals and self-improvement (Cumulative Correction Treatment Regulation, Art. 55). Furthermore, inmates are permitted to read newspapers and books and other publications that are not inappropriate or that do not encourage crimes (Penal Administration Act, Art. 33).

Religion

171. Inmates are free to worship according to their own religion and religious workers are permitted to enter the prison in order to perform religious activities for inmates.

Home leave

172. Programmes of home leave and adaptation to social life have been implemented in order to assist inmates in returning to a normal life in society. These programmes are linked with the programme of release on parole for exemplary inmates (Penal Administration Act, Arts. 44, 49-52, its Enforcement Decree, Art. 139, Cumulative Correction Treatment Regulation, Art. 88 and Home Leave Enforcement Regulation).

Civilians' participation in inmates' rehabilitation

173. Renowned people from the community, such as social workers, lawyers and businessmen assist in rehabilitating inmates through religious lectures and mediation of job opportunities. The Religious Guidance Committee which is composed of pastors, monks and priests, provides religious guidance to inmates through religious education and counselling, etc.

Technical and vocational training

174. In order to enable inmates to make a living after their release from prison, they are offered vocational training on 54 subjects such as computers, carpentry, etc. As a result, almost all inmates have acquired technician certificates and many have won awards in technical skills competitions. In addition, the inmates are provided with vocational training according to their work experience, interests and age and are provided with compensation of up to 3,000 won per day for their work in order to assist them to make a living after they return to society (Penal Administration Act, Art. 39). In 1990, 3,329 inmates acquired the technician certificate.

Open correction facilities

175. Exemplary inmates in open correction facilities and general correction facilities are permitted to commute to companies in order to receive technical training. After their release from prison, these inmates are guaranteed a job in these companies.

Cultivation of a sound and stable personality

176. Juvenile inmates are permitted to participate in sports, singing and speech contests, to watch movies and television and listen to the radio so that they may cultivate a sound and stable personality.

Parole

177. Since a long period of detention and the environment of places of detention significantly affect the character of juvenile inmates, Article 65 of the Juvenile Act provides for more lenient standard of parole for juveniles than adults. Accordingly, a juvenile inmate who has served the following period may be released on parole:

(a) 5 years in case of a life sentence;

(b) 3 years in case of a 15 year sentence;

(c) One third of the minimum term of an indeterminate sentence.

Rehabilitation of juvenile offenders

178. Juvenile offenders between 14 and 19 years of age, who were transferred to a juvenile reformatory in accordance with Article 32(1) No. 6 and 7 of the Juvenile Act (protected juveniles), are treated in a humane manner that provides an appropriate environment for the further development of stable and disciplined character (Juvenile Reformatory Act, Art. 5).

Upgraded treatment

179. The treatment of protected juveniles is upgraded step-by-step according to improvements in their character and behaviour (Juvenile Reformatory Act, Art. 6, its Enforcement Decree, Arts. 5, 6).

Separate treatment

180. (a) Review

The place and period of detention and educational courses for new juvenile inmates are determined by the Protected Juvenile Treatment Committee after 10 days of review (Enforcement Decree of the Juvenile Reformatory Act, Arts. 4, 11, 14 and 15).

(b) Separate detention

Juvenile reformatories are classified and operated according to the following categories: four educational reformatories, three vocational training reformatories, one female reformatory, one special reformatory and two general reformatories. The place of detention for the juvenile inmates is determined by such factors as their sex, age, number of times of entering the reformatory, crime, sentence and the educational course they are required to take, etc. (Juvenile Reformatory Act, Art. 8 and its Enforcement Decree, Arts. 4, 11, 15 and 16).

Detention period

181. The detention period for juveniles is flexible and depends on their behaviour at the detention place. The period of detention is as follows:

(a) Six months or less for a juvenile inmate under the minimum sentence;

(b) Thirteen months or more but less than 18 months for a juvenile inmate whose rehabilitation is deemed difficult;

(c) Eighteen months or more for a juvenile inmate whose rehabilitation is deemed extremely difficult.

In all cases, the maximum period of detention cannot exceed two years (Juvenile Act, Art. 32, para. 1, No. 6 and 7, Juvenile Reformatory Act, Arts. 43 and 44, Protection and Supervision Act, Art. 28(1), Juvenile Reformatory Manual, Art. 21(2)).

Detention facilities

182. In the juvenile reformatories, each inmate has three square metres of space. The educational programmes for juvenile inmates are generally identical with that of regular schools in society. Inmates are permitted to watch television, read newspapers and participate in sports activities during their leisure time.

183. Protected juvenile inmates are provided with everything they need for their life and education in the detention places. In every juvenile reformatory, there are doctors and nurses to treat the juvenile inmates and if a proper treatment is not possible within the reformatory, the inmates are taken to an outside hospital.

184. A juvenile inmate is permitted, without any restriction, to meet people other than those who are deemed to be harmful to him (Juvenile Reformatory Act, Art. 18, its Enforcement Decree Arts. 48, 50).

Petitions

185. In every reformatory, there are boxes for petitions by the juvenile inmates and the petitioning inmate is notified of the relevant decision promptly. At least once every month, a poll is conducted on the conditions of detention and the results of the poll are taken into account in operating the reformatory (Juvenile Reformatory Act, Arts. 10, 11 and its Enforcement Decree, Arts. 19, 20).

Control of correction facilities

186. In order to protect the human rights of convicts in the correction facilities and to ensure that they receive appropriate treatment, strict controls are imposed on every correction facility.

(a) A public official designated by the Minister of Justice inspects correction facilities such as prisons, juvenile reformatories and detention places at least once a year (Penal Administration Act, Art. 5(1)).

(b) The Board of Audit and Inspection inspects correction facilities in order to supervise and improve their operation and management (Board of Audit and Inspection Act, Art. 20).

(c) Judges and prosecutors may inspect the correction facilities in order to ensure just execution of criminal penalties and to check the conditions of the detention of unconvicted persons (Penal Administrations Act, Art. 5(2)).

Remedies

187. In case an inmate has any complaints regarding treatment at the prison, he may petition the Minister of Justice in writing or the public official who is making the inspection rounds, either in writing or orally (Penal Administration Act, Art. 6). He may also petition the prison chief by requesting an interview (Enforcement Decree of the Penal Administration Act, Art. 9). In any case, the confidentiality of the petition is guaranteed (Enforcement Decree of the Penal Administration Act, Art. 4, 6). In the case of an infringement of human rights, a complaint, accusation, claim for compensation from the State and administrative petition are available in addition to the above-mentioned measures. In case a remedy for an infringement of fundamental rights guaranteed by the Constitution is not available through the legal procedures, a constitutional petition may be made to the Constitution Court (Constitution Court Act, Art. 68).

Standard minimum rules for the treatment of prisoners

188. As has been explained in detail in the preceding paragraphs, the penal administration laws and regulations of the Republic of Korea reflect most of the "Standard Minimum Rules for the Treatment of Prisoners" adopted by the United Nations.

Article 11

189. Under the Korean legal system, failure to perform contractual obligations may incur civil liability but does not constitute a crime. Thus, no person may be arrested or detained on the grounds that he failed to perform contractual obligations.

190. The Special Deliberation Council on the Revision of the Criminal Law in the Ministry of Justice has once considered criminalizing the failure to perform contractual duties in order to punish debtors who can afford to meet their obligations but evade doing so. However, it was concluded that such criminalization is not in accordance with the spirit of the Covenant.

191. The Code of Civil Procedure, amended on 13 January 1990, provides that a court, at the request of a creditor, may order a debtor to submit an affidavit describing his property and punish the debtor who refuses to submit the affidavit or presents a false one (Art. 524(8)).

Article 12

192. Article 14 of the Constitution provides that "all citizens shall enjoy freedom of residence and the right to move at will". Therefore, all citizens are free to move, to emigrate and to travel in and out of the Republic of Korea. Although the Constitution does not contain an explicit provision, it fully guarantees the right of a citizen to enter his own country provided for in article 12, paragraph 4 of the Covenant.

193. The right stated in this Article may be restricted in accordance with the following provisions only when it is necessary for national security, public order or public welfare:

(a) Restriction on the residence of an accused person when execution of his detention was suspended (Code of Criminal Procedure, Art. 101(1));

(b) Restriction on leaving Korea for a person who is under criminal investigation (Immigration Law, Art. 4) and restriction on the area of activity for those who were granted permission to land (Immigration Law, Arts. 12(2), 13(2), 14(2));

(c) Temporary isolation of a patient with an infectious disease (Communicable Disease Prevention Act, Art. 37);

(d) Restriction by special measures of the martial law commander (Martial Law Act, Art. 9).

Article 13

194. A foreigner, who violates the provisions of the Immigration Law, may be expelled from the Republic of Korea (Immigration Law, Art. 45).

195. The persons who may be expelled under the Immigration Law are those who threaten the national security or public order, such as:

(a) A person who entered the Republic of Korea without an entry visa (Art. 45(1) and (3));

(b) A person who is not permitted to enter the Republic of Korea (Art. 45(2));

(c) A person who has landed without permission (Art. 45(4));

(d) A person who has violated the conditions set forth in the landing permission (Art. 45(5));

(e) A person who is in Korea after the expiration of a visa (Art. 45(6));

(f) A person who has been released after having been sentenced to imprisonment or a more severe punishment (Art. 45(10)).

196. A foreigner may be expelled in accordance with the procedures provided for in Articles 46 to 64 of the Immigration Law. Any foreigner under

investigation for expulsion is guaranteed the right to submit pleadings against his expulsion to the competent authority. When an expulsion order is issued, the foreigner shall be informed by the Immigration Office and is guaranteed the right to appeal to the Minister of Justice.

197. In addition, a foreigner under an expulsion order may institute an administrative litigation with respect to the order. If the defendant has complaints about the judgement of the administrative litigation, he may appeal to the Supreme Court.

Article 14

Equality before the courts, right to a fair, open and independent trial

Paragraph 1

198. Article 11 of the Constitution states that "All citizens shall be equal before the law". Furthermore, right to a fair, open and independent trial is guaranteed by Article 27(1) and (3) and Chapter 5 (Arts. 101-110) of the Constitution.

199. Article 27(1) of the Constitution states that "all citizens shall have the right to be tried in conformity with the law by judges qualified under the Constitution and the law". The provisions of the Constitution and the Court Organization Act concerning the qualification of the judges are as follows:

(a) Article 42 of the Court Organization Act, which was promulgated in accordance with Article 101(3) of the Constitution, prescribes the qualification of the judges.

(b) Article 104 of the Constitution provides:

(i) That the Chief Justice of the Supreme Court shall be appointed by the President with the consent of the National Assembly;

(ii) That the Supreme Court Justices shall be appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly;

(iii) That judges other than the Chief Justice and the Supreme Court Justices shall be appointed by the Chief Justice with the consent of the Conference of the Supreme Court Justices.

(c) In order to ensure the independence of the court, the Constitution prescribes the term of office and the retirement age of the judges (Art. 105) and further guarantees the independence of the judges by stating that "no judge shall be removed from office except by impeachment or by a sentence of imprisonment or heavier punishment ..." (Art. 106).

(d) The Constitution also provides that "Judges shall rule independently according to their conscience and in conformity with the Constitution and law".

(e) Judges may be precluded from adjudicating a case for reasons prescribed by law.

200. Article 27(3) of the Constitution provides that "All citizens shall have the right to a prompt trial" and that "The accused shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary".

201. Article 109 of the Constitution also provides that "Trials and decisions of the courts shall be open to the public. Provided, however, that when there is a danger that such trials may undermine the national security, or disturb public safety and order or may be harmful to public morals, trials may be closed to the public by a court decision".

202. The Court Organization Act and the Code of Criminal Procedure contain detailed provisions to enforce the principle of open trials. Article 57 of the Court Organization Act provides that if a court decides to close a trial to the public because an open trial might endanger national security, public peace and order or good public morals, the court must indicate the reasons therefor and may admit to the trial those it deems appropriate. The record of the trial shall state whether or not the trial was open to the public and if it was not open to the public, the reasons why it was held in closed session (Code of Criminal Procedure, Art. 51(2), item 5). When the principle of open trials is violated, this may be the subject of an appeal (Code of Civil Procedure, Art. 394(1), Code of Criminal Procedure, Art. 361-5, item 9). However, Article 13 of the Non-Contentious Cases Act states that "Trials of non-contentious cases shall not be open. However, the court may permit anyone whom it deems appropriate to attend the trial" and the Code of Civil Reconciliation Procedure provides that "Reconciliatory procedures shall not be open. However, the judge in charge of the reconciliation may permit anyone whom he/she deems appropriate to attend the hearing."

Presumption of innocence

Paragraph 2

203. While the presumption of innocence was not explicitly provided for in the earlier Constitutions, Article 27(4) of the current Constitution provides that an accused person shall be presumed innocent until proven guilty.
Article 275-2 of the Code of Criminal Procedure also provides for the presumption of innocence. Article 118(2) of the Rules of Criminal Procedure also states that documents or any other articles, which may cause the court to have a presupposition on the case, shall not be attached to the indictment. Under the above-mentioned provisions, presumption of innocence is the resolute principle of criminal procedure.

Right of the accused in a trial

Paragraph 3

204. Regarding the right of the accused in a trial, Korean laws provide for the following safeguards:

(a) Right to be promptly notified the details of the crime the accused is suspected to have committed:

(i) When a suspect or an accused is arrested or detained, he shall be immediately notified of the reasons for the arrest or detention (Code of Criminal Procedure, Arts. 72, 88, 209). In the case of a public trial, the court shall send, at least five days prior to the first trial date, a copy of the indictment to the accused or his defence counsel (Code of Criminal Procedure, Art. 266).

(ii) In the case that there is a change in the charges during a trial, the court shall promptly notify to the accused or his defence counsel of the reasons thereof. In the case that the change is deemed to place the accused at a further disadvantage, the court may, ex officio or upon the request of the accused or his defence counsel, grant a recess for a period necessary for the accused to prepare his defence (Code of Criminal Procedure, Art. 298(3) and (4)). Such provisions ensure that the accused and his defence counsel are informed of the facts concerning the charges against the accused in advance and prepare their defence against the charges.

(b) Right to have sufficient time and appropriate conveniences for the preparation of defence and the right to communicate with his defence counsel:

(i) Article 12(4) of the Constitution provides that any person who is arrested or detained shall have the prompt assistance from a defence counsel and Article 12(5) further provides that no person shall be arrested or detained without being informed of the reasons therefor, and of his right to the assistance from defence counsel.

(ii) In this connection, Article 34 of the Code of Criminal Procedure states that the defence counsel may interview the accused or suspect who is in detention, deliver to or receive from the accused or suspect any documents and other materials and have a doctor treat the accused or the suspect.

(iii) The Supreme Court has recently decided that the right to communicate with the defence counsel may not be restricted (Supreme Court decision on 28 March 1991, 91-MO-24). The decision is consistent with the spirit of the Constitution and the Code of Criminal Procedure.

(c) Right to a speedy trial: Article 27(3) of the Constitution guarantees the right to a speedy trial. As has been stated in article 9, paragraph 3 of the Covenant in this report (see para. 154 (a)), the Code of Criminal Procedure strictly limits the detention period of the accused and the detention for a trial may not extend for more than six months, even for the trial of the most serious crime.

(d) Right to appear in the trial and right to a defence counsel appointed by the State:

(i) The accused has the right to appear in the trial and state facts favourable to his case. When the accused does not appear on the trial date, the trial cannot be commenced (Code of Criminal Procedure, Arts. 276, 286). However, the trial may be convened without the appearance of the accused in the following exceptional cases (Code of Criminal Procedure, Arts. 277, 306, 330, 365, Special Act for Speedy Proceedings, Art. 23):

a. Where the offence charged is a misdemeanour;

b. Where it is evident that the charged is to be dismissed;

c. Where an accused refuses to make a statement, leaves the court without permission or is ordered by the judge to leave the court for the maintenance of court order;

d. Where the accused does not appear in the court more than twice without a proper reason;

e. Where the accused cannot be located for more than six months. However, in the case that the offence charged is punishable by death or imprisonment or confinement of more than three years, public trials shall not be conducted without the presence of the accused.

(ii) In case a defendant in a criminal trial is unable to secure a defence counsel, the State shall assign a counsel, free of charge, for the defendant as prescribed by law (Constitution, Art. 12(4)). Article 33 of the Code of Criminal Procedure provides that the court shall, ex officio, appoint a counsel in the following cases:

a. Where the accused is a minor;

b. Where the accused is 70 years of age or more;

c. Where the accused is a deaf or a mute;

d. Where the accused is suspected of being mentally unsound;

e. Where the accused is unable to select a counsel because of poverty or any other reason.

(iii) Furthermore, in case the offence charged is punishable by death or imprisonment of more than three years, public trials shall not be conducted without defence counsel. In case a defendant in a military court has no counsel, the court shall appoint a counsel ex officio (Code of Criminal Procedure, Arts. 282, 283, Military Court Act, Art. 62(1)).

(e) Right to examine evidence and witnesses:

(i) Under the Code of Criminal Procedure, the prosecutor, the accused or his defence counsel may apply for the examination of the evidence and the judges shall ask the accused for his opinion in the results of the examination and shall inform the accused of his right to apply for the examination of the evidence (Arts. 293, 294). The prosecutor, the accused or his defence counsel may raise objections regarding the examination of the evidence (Art. 296) and may be present during the examination of witnesses (Art. 163).

(ii) In the case that the judge recognizes that a witness cannot sufficiently testify in the presence of the accused, the accused may be ordered to leave the court (the defence counsel may remain at the court). However, the court shall inform the accused or his defence counsel of the witness' testimony if it contains unexpected and serious statements which are disadvantageous to the accused (Art. 164). Furthermore, Article 310-2 of the Code of Criminal Procedure strictly limits the probative value of hearsay evidence and provides that the accused shall have the right to cross-examine witnesses.

(f) Right to an interpreter: If a person is not versed in the Korean language, he shall be provided with an interpreter (Code of Criminal Procedure, Art. 180, Court Organization Act, Art. 62(2)). If a person required to make a statement is deaf or mute, any interpreter shall be provided and letters, signs or marks not in the Korean language shall be translated (Code of Criminal Procedure, Arts. 181, 182). The State pays for the cost of interpretation including travel and accommodation costs of the interpreter.

(g) Right to be silent and right not to be compelled to testify:

(i) Article 12(2) of the Constitution states that no citizen shall be tortured, or shall be compelled to testify against himself in criminal cases. Further, Article 12(7) provides that in the case that a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest or deceit, etc., such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession.

(ii) In criminal cases, confessions made against the defendant's will and a disadvantageous confession without supporting evidence cannot be taken as evidence of guilt (Code of Criminal Procedure, Arts. 309, 310)).

(iii) Article 289 of the Code of Criminal Procedure provides that the accused may refuse to answer questions and Article 200(2) of the Code states that the prosecutor or the police officer shall notify the suspect in advance he may refuse to answer questions.

Special treatment for juvenile offenders

Paragraph 4

205. The Juvenile Act contains special provisions that promote healthy and sound upbringing of juveniles.

Juveniles to be protected

206. Protected juveniles are defined as follows (Juvenile Act. Art. 4(1)):

(a) Juveniles between the ages of 14 and 19 who have committed a crime;

(b) Juveniles between the ages of 12 and 13 who have committed acts against the criminal laws and decrees;

(c) Juveniles between the ages of 12 and 19 who may be prone to commit acts against the criminal laws and decrees.

Investigation

207. In investigating juvenile cases, medical science, psychology, pedagogy, sociology and other professional disciplines are used to examine the character, personal records, family background, and other circumstances of the juvenile (Juvenile Act, Art. 9). When the Juvenile Department (the Juvenile Department of the Family Court or the Juvenile Department of a District Court) or an investigator investigates a juvenile with respect to the facts of the crime, the Juvenile Department or the investigator shall notify that he may refuse to make any incriminating statement (Juvenile Act, Art. 10). In its investigation or trial, the Juvenile Department or the investigator takes into account diagnosis by psychiatrists, psychologists, social workers, educators and other experts as well as classification results and opinions by the Juvenile Classification Office (Juvenile Act, Art. 12).

208. When a criminal case involving a juvenile is related to another ordinary case, the trial of the juvenile shall be conducted separately from the other case if such separation does not cause any obstruction to the trial proceedings of the juvenile case (Juvenile Act, Art. 57). The trial of the juvenile case shall be conducted in a kind and gentle manner and particular emphasis should be placed on the evaluation of the juvenile's physical and mental condition, character, career, family background and other circumstances (Juvenile Act, Art. 58). The judge and clerk shall be present during the

trial and the investigator, guardian and assistant of the juvenile may attend and state their opinions concerning the case (Juvenile Act, Arts. 23, 25). The trial shall not be made public. However, when deemed appropriate, the judge may permit certain persons to attend the trial (Juvenile Act, Arts. 23 to 25).

Prohibition of reporting

209. Regarding the cases involving protected juveniles and criminal cases under investigation or a trial in accordance with the Juvenile Act, facts or photographs which may identify the juveniles by means of their names, ages, occupations, appearances and other things shall not be published in newspapers or other publications nor shall they be broadcast. In case of violation of this provision, the authors, editors, publishers or broadcasters shall be punished by an imprisonment of less than one year or a fine not exceeding 3,000,000 won (Juvenile Act, Art. 68(1) and (2)).

Right to appeal

Paragraph 5

210. The judicial power is vested in the courts, and the courts are composed of the Supreme Court, which is the highest court of the State, and the other lower courts (Constitution, Art. 101(1) and (2)). In accordance with this provision, the Code of Criminal Procedure contains detailed provisions on the appeal to the High Court and the Supreme Court (Part III), and on the retrial and the extraordinary appeals (Part IV). Through those provisions the right of the accused to appeal or reappeal is fully guaranteed and when evidence which may prove the innocence of the convict is newly discovered after the end of a trial, the convict may request a retrial.

211. The Korean Government has made a reservation on paragraph 5 of article 14 of the Covenant, because Article 110(4) of the Constitution and Article 534 of the Military Court Act, which stipulate that military trials under extraordinary law may not be appealed except in case of death sentences, are not in conformity with the Covenant.

Amnesty and criminal compensation

Paragraph 6

212. With regard to amnesty and criminal compensation, explanations have already been given in the descriptive paragraph of article 9, paragraph 5 of the Covenant (see para. 156). In this connection, no criminal compensation is provided in the case of an amnesty in the Republic of Korea.

Double jeopardy

Paragraph 7

213. Article 13(1) of the Constitution clearly expresses the principle against double jeopardy (ne bis in idem) by providing that no citizen shall be prosecuted for an act which does not constitute a crime at the time the act was committed, nor shall he be placed under double jeopardy. Thus, a case

involving a retrial of the crime for which a final judgement of acquittal has already been rendered, must be dismissed (Code of Criminal Procedure, Art. 326, item 1). The principle against double jeopardy also applies to misdemeanour cases where the accused has already been sentenced to confinement or a fine.

214. However, the principle against double jeopardy cannot be forced upon another country as considerable differences might exist in legal systems and laws from one country to another. Article 7 of the Criminal Code provides that a sentence imposed abroad may be the basis for mitigating or eliminating the sentence in the Republic of Korea for the same crime. It is for this reason that the Korean Government has made a reservation on paragraph 7 of article 14 of the Covenant.

Article 15

Nulla poena sine lege, nullum crimen sine lege

215. Article 13(1) of the Constitution stipulates that no citizen shall be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed. The prohibition of ex post facto laws is guaranteed by the provisions of the Criminal Code. Article 1 of the Criminal Code reaffirms the principle and further provides that if a law is changed after the commission of an act and such an act thereby no longer constitutes a crime under the new law, or the punishment for the act under the new law is less severe than under the previous law, the new law shall apply and that if a law is changed after the sentence for a crime has become final and such act thereby no longer constitutes a crime under the new law, the punishment shall not be executed. Therefore, the accused are guaranteed the benefits of the new law.

Retroactive effect of a decision of unconstitutionality

216. Article 47(2) of the Constitution Court Act provides that any law decided to be unconstitutional shall lose its effect from the decision date and that the law relating to any penalty shall lose its effect retroactively. Thus, retroactive effect of a decision of unconstitutionality is acknowledged only with respect to laws relating to criminal punishment. In accordance with this provision, a retrial may be requested with respect to a conviction based on the law which was held unconstitutional (Constitution Court Act, Art. 47(3)).

Article 16

217. Article 10 of the Constitution provides that, "All citizens shall be assured of human worth and dignity and shall have the right to pursue happiness and it shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals".

218. Article 37 of the Constitution states, "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution and the freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order or public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated". These provisions of the Constitution

guarantee that human rights shall be respected in all the laws and regulations. In this connection, Article 3 of the Civil Code provides that "All persons can enjoy rights and assume duties during their lives".

219. All persons, irrespective of their nationality, are entitled to be treated as human beings. Therefore, human worth shall not be denied to criminals, patients of mental disease, embryos and deformed children.

Restrictions of the rights in exceptional cases

220. Article 16 of the Covenant should not be interpreted to prohibit any restrictions on the right of minors, mentally disabled persons and foreigners.

221. Article 43 of the Criminal Code prescribes restrictions on the rights of the persons who are convicted.

(a) A person who is sentenced to death or life imprisonment shall be deprived of the following:

(i) Qualification to become a public official;

(ii) Right to vote and to be elected under public law;

(iii) Qualification concerning a business under public law, for which necessary conditions have been prescribed by law;

(iv) Qualification to become a director, auditor, manager, inspector or custodian of a juristic person.

(b) Qualifications (i) through (iii) shall be suspended for a person who is sentenced to an imprisonment for a limited term until the sentence is fully served or exempted.

222. (a) Capacity of a minor: The Civil Code prescribes restrictions on the legal capacity of a minor in Article 5 which states, "A minor shall obtain the consent of his/her legal guardian in order to perform any juristic act, except for an act to merely acquire a right or to be relieved of an obligation. Any act performed in violation of this provision is voidable".

(b) Capacity of a person with limited financial capacity: The Family Court must adjudge a person with a severe mental or physical disease or spendthrift who is liable to bring his family to bankruptcy as a person with limited financial capacity (Civil Code, Art. 9). The capacity of a person with a limited capacity shall be that of a minor.

(c) Capacity of an incompetent: The Family Court must adjudge a person with a mental disorder an incompetent. The judicial acts of an incompetent may be voidable (Civil Code, Arts. 12 and 13).

Article 17

223. Article 16 of the Constitution states "All citizens shall be free from intrusion into their place of residence. In the case of search or seizure in a residence, a warrant issued by a judge upon request of a prosecutor shall be presented". The Criminal Code also prohibits arbitrary entry by State agencies into the residence of citizens (Arts. 319-322). Any person who, without a justifiable reason, conceals himself in an uninhabited and unguarded house, shall be punished by Article 1, item 1 of the Minor Offence Punishment Act.

224. The rights to privacy of the citizens shall not be infringed upon (Constitution, Art. 17). A doctor, lawyer or any other person who discloses another person's secrets which have come to his knowledge in the course of practising his profession, shall be punished (Criminal Code, Art. 317, Code of Criminal Procedure, Art. 149, Code of Civil Procedure, Art. 286). The right to privacy, which includes the right to non-disclosure, without good reason, of the past events that may injure the honour and reputation of a person, is protected in Korea.

225. The honour and credibility of an individual are protected as follows:

(a) A person who defames another by disclosing facts concerning the other person or defames a dead person by publicly alleging false facts shall be punished (Criminal Code, Arts. 307-309).

(b) A person who injures the credibility of another person shall be punished (Criminal Code, Art. 313).

(c) A person whose credibility or reputation is damaged may seek compensation for mental distress (Civil Code, Art. 751) and may also request the restoration to the original state (Civil Code, Art. 764).

226. Article 18 of the Constitution provides that the right to privacy of correspondence shall not be infringed upon. Under the Criminal Code, a person, who violates the right to privacy of another person by opening his letter, document or drawing sealed or protected in other ways, shall be punished (Art. 316). The Postal Act and the Korea Telecom Corporation Law also guarantees the secrecy of correspondence in accordance with the spirit of the Constitution. No one who engages or had engaged in the postal services or telecommunication services shall divulge any information obtained in the discharge of his duties. Offenders shall be subject to imprisonment or a fine (Postal Act, Arts. 3, 51, 51-2, Korea Telecom Corporation Law, Arts. 9, 20).

227. The Government is about to operate a nationwide administrative telecommunication network with a view to improving public administration. In this regard, the Enforcement Decree of the Resident Registration Law is being amended so that only a person, his family or representative is allowed to review the person's certificate of Resident Registration or request a copy thereof. At the same time, the Personal Information Protection Act is to be legislated, which will provide an individual with the rights to request information on himself and to seek compensation for the infringement of his rights.

228. The Telecommunication Privacy Act will soon be legislated, which will provide that the censorship of correspondence and wiretapping shall be prohibited "except in limited cases where they are inevitable for the purpose of investigating felonies and where the court grants permission to do so". Evidence acquired from illegal censorship or wiretapping shall not be admitted in a trial.

Article 18

229. The Constitution provides that all citizens shall enjoy freedom of conscience (Art. 19) and freedom of religion (Art. 20). The Constitution does not expressly provide for the freedom of thought. However, it is considered that the conscience stated in Article 19 of the Constitution, covers not only non-metaphysical thought (moral, ethical decision and perception of moral duty) but also metaphysical thought (creed and values). Thus, all the rights stated in article 18 of the Covenant are guaranteed by the Constitution.

230. Freedom of conscience includes the right not to be forced, coerced or interfered with in making conscientious decisions and the right to be silent on what has been decided in one's conscience. The right to be silent does not include the right not to testify on simple facts as a witness in a criminal trial (Code of Criminal Procedure, Art. 161). However, no citizen shall be compelled to testify himself in a criminal case (Constitution, Art. 12(2)) and, in certain cases, refusal to testify as a witness is allowed (Code of Criminal Procedure, Arts. 147-150).

231. The Constitution Court has held that a court's order to the press to make a public apology for damaging the honour and reputation of an individual violates the constitutional rights of conscience and is thus unconstitutional (89-HUNMA-160 of 1 April 1991).

232. Conscientious objection to the military service has been explained in the description of article 8, paragraph 3 of the Covenant (see para. 146).

233. Freedom of religion comprises the following rights:

(a) Right to manifest one's religious creed;

(b) Right to hold religious ceremonies, to preach and to worship;

(c) Right to congregate and to assemble for religious purposes;

(d) Right to engage in a missionary work;

(e) Right to render religious education.

Freedom of speech in the course of religious activities is also guaranteed. Hence, religious groups are not discriminated against in their publication and distribution of religious literature (Constitution, Art. 21). In Korea, there are a variety of broadcasting institutions, newspapers and publications run by religious groups.

234. In accordance with Article 37(2) of the Constitution, the right to carry out religious activities may be restricted for the maintenance of public order. This restriction is consistent with paragraph 3 of article 18 of the Covenant.

235. Article 20(2) of the Constitution provides that "No State religion shall be recognized and church and State shall be separated". Therefore, religion is separated from the Government and the State shall not perform any religious education or engage in any religious activities. Article 5(2) of the Education Act provides that the public schools shall not conduct any religious education. The State is prohibited from rendering special economic and financial assistance in favour of a religion and from discriminating against a religion. However, the State may subsidize the costs for the management of cultural properties such as old churches or temples (Cultural Properties Protection Act, Art. 28).

236. Under paragraph 4 of article 18 of the Covenant, the parties undertake to respect the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. No law which restricts the above liberty exists in Korea. Article 913 of the Civil Code states that a person with parental authority has the liberty to protect and educate a child. In accordance with this provision, parents or legal guardians are guaranteed the liberty to provide moral and religious education for their children according to their own conviction. In Korea, the religion of a parent is not automatically transferred to his child. In addition, a child who attends a private school established by a religious group is free to choose his own religion. Therefore, everyone is entitled to choose his own religion in accordance with his own conviction.

237. Inmates in the correctional facilities are also free to choose and change their religion. Article 31 of the Penal Administration Act provides that in the case that an inmate requests an admonition based on his religion, the prison authority shall allow it. In accordance with this provision, religious workers of various denominations, have requested membership to the Religious Guidance Committee and perform weekly religious ceremonies, jointly or individually, by denomination, and deliver lectures to those who are in detention.

Article 19

238. The right under paragraph 1 of article 19 of the Covenant is guaranteed under Article 19 of the Constitution which provides for freedom of conscience. Freedom of conscience is an absolute fundamental right which is not subject to any kind of restriction. No law which places restrictions on this right exists in Korea.

239. The rights referred to in paragraph 2 of article 19 of the Covenant are guaranteed under Article 21(1) of the Constitution which provides that all citizens shall enjoy freedom of speech, press, assembly and association and Article 22(1) which provides that all citizens shall enjoy freedom of education and arts. Article 21(2) of the Constitution provides that censorship of speech and the press shall not be recognized.

240. Freedom of expression is the essence of mental freedom and the cornerstone of democracy. However, it is not an absolute fundamental right. Thus, it is subject to restrictions. The duties and responsibilities in the exercise of this right are specified in Article 21(4) of the Constitution, which provides that the exercise of freedom of expression shall not violate the honour or rights of other persons or undermine public morals or social ethics and that, should the exercise of freedom of expression violate the honour or rights of other persons, claims may be made for the damage resulting therefrom. Under the Broadcast Act and the Act Relating to the Registration of Periodicals, correction of the report is available as a remedy for infringements committed by the press, publishing firms or broadcasting companies (Act Relating to the Registration of Periodicals, Arts. 16, 20, Broadcast Act, Arts. 41, 42).

241. The following provisions prohibit the abuse of freedom of expression by the press or the publishing firms:

(a) Defamation through printed materials (Criminal Code, Art. 309);

(b) Disclosure of others' occupational secrets (Criminal Code, Art. 317);

(c) Distribution of obscene pictures, etc. (Criminal Code, Art. 243);

(d) Incitement of crimes relating to insurrection and foreign aggression (Criminal Code, Arts. 90(2), 101(2), 120(2), National Security Law, Art. 4(1), item 6, 7);

(e) Intrusion into another's privacy (Civil Code, Art. 751) etc.

Broadcasting companies

242. The purpose of the Broadcast Act is to help the formation of public opinion in a democratic manner, to improve national culture and to contribute to the promotion of public welfare by guaranteeing freedom of press and the public functions of broadcasting companies (Broadcast Act, Art. 1). Under the Act, freedom of broadcast is guaranteed and no person shall regulate or interfere with the making of a programme or the operation of a broadcasting company without complying with the conditions prescribed by law (Art. 3).

243. In Korea, there are three kinds of broadcasting companies, public, private and special. Public broadcasting companies are invested by the State or special public legal corporations but operate independently. Private broadcasting companies are corporations operated by an individual or a company. Special broadcasting companies are operated and subsidized by the State, local governments or religious groups for the limited purposes of education and transportation information, etc.

The operators of public broadcasting companies must be socially and politically neutral figures. There are two public broadcasting companies in Korea, the Korea Broadcasting System (KBS) and the Munhwa Broadcasting Company (MBC):

(a) The Executive Board of KBS is composed of 12 members who are appointed by the President of the Republic of Korea on the recommendation of the Broadcast Committee. The president of the KBS is appointed by the President of the Republic of Korea on the recommendation of the Executive Board. The Broadcast Committee is composed of nine members of whom the Executive, the National Assembly and the Judiciary recommend three persons each.

(b) The Foundation for the Broadcast Culture (FFBC) is the major stockholder of MBC. FFBC, established under the Foundation for Broadcast Culture Promotion Act, is a special corporation. The Executive Board of FFBC is composed of 10 members of whom the National Assembly and the Broadcast Committee recommend 4 or 6 persons respectively. The FFBC elects the president of MBC. The neutrality of MBC in political and social matters is fully guaranteed.

Restrictions on freedom of expression

244. Since freedom of expression is regarded as the cornerstone of democracy, it is fully guaranteed in the Republic of Korea. However, it is subject to restrictions in limited cases. As provided for in paragraph 3 of article 19 of the Covenant, freedom of expression is subject to restrictions in accordance with the general principle of restrictions on fundamental rights referred to in Article 37(2) of the Constitution. The restrictions on the right by law may be imposed only when necessary for national security, the maintenance of law and order or public welfare and even when such restrictions are imposed, no essential aspect of the right shall be violated. If an emergency order is issued by the President under Article 76 of the Constitution, freedom of speech and press may be restricted. Under martial law (Constitution Art. 77(3)), the martial law commander may take special measures concerning freedom of speech and the press. (Martial Law Act, Art. 9(1)).

National security law and freedom of expression

245. The National Security Law is a special law to cope with the special situation facing the Korean peninsula. The Korean people suffered a horrifying war for three years (1950 to 1953) started by the North Korean attack on the South. Therefore, most South Koreans are fearful of the North's aggression and are prepared to cope with the special situation of the divided nation. Under these circumstances, the Korean Government promulgated the National Security Law and has applied it to check anti-State activities that threaten the security and democratic system of the Republic of Korea.

246. Article 7(1) of the National Security Law provides that any person, who aids an anti-State organization by praising or encouraging the activities of the anti-State organization, shall be punished. Article 7(5) of the Law provides that any person, who produces or distributes documents, drawings or any other materials for the benefit of an anti-State organization, shall be punished. The Constitution Court has held that Article 7(1) and (5) of the National Security Law is not inconsistent with the Constitution because these provisions are applied when the security or safety of the State is in danger

or when the offences undermine the basic order of democracy (2 April 1990, 89-HUNGA-113). In accordance with the spirit of the decision, the Government has done its utmost in interpreting and applying these provisions so that the rights and freedoms of the people are fully protected.

247. On 10 May 1991, the National Assembly passed a series of amendments to the National Security Law in order to reduce the scope of its application. In particular, Article 7(1) and (5) of the Act was amended to eliminate the possibility of infringement of human rights by adding "with the knowledge that it will endanger national security or survivial, or the free and democratic order" to the previous provisions. The amended National Security Law was promulgated on 31 May 1991.

The convicts right to information

248. Under the Korean penal administration system, convicts are guaranteed the right to gather information, which comprises subscribing to newspapers, reading books, writing and receiving letters, meeting their relatives, listening to radio and watching television. Explanations have already been provided in paragraphs 168 to 170.

Right to know

249. With respect to the right to know, the Constitution Court has held: "It is in violation of the right to know of the claimant, and thus unconstitutional, that the provincial governor of Ichon-kun refused the claimant's numerous requests to obtain and review a copy of the Certificate of the Real Estate Registration." (4 September 1989, 88-HUNMA-22).

Article 20

250. The preamble of the Constitution states, "... to contribute to lasting world peace and the common prosperity of mankind ..." and Article 5(1) of the Constitution also provides "the Republic of Korea shall endeavour to maintain international peace and shall renounce all aggressive wars". On account of the absolute character of the above-mentioned provisions, no further legislation is required and the above-mentioned provisions are consistent with article 20, paragraph 1 of the Covenant. Under Article 112 of the Criminal Code, a person who violates an order to stay neutral in a war between foreign countries shall be punished by imprisonment or a fine.

251. As has been previously stated in this report, all citizens shall be equally assured of human worth and dignity without discrimination. In light of this principle, instigation of national, racial or religious hatred towards others is subject to punishment. Under the Criminal Code, a person, who, in conspiracy with a foreign country, instigates or propagates the crime of commencing hostilities or fighting against the Republic of Korea, or who instigates or propagates another person to act as a spy for an enemy country, shall be punished. (Art. 101(2)). A person who wages a private war against a foreign country shall also be punished (Art. 111). The Republic of Korea has acceded to the International Covention on the Elimination of All Forms of Racial Discrimination. The explanations thereof have been provided in article 2 of the Covenant (see para. 44).

Article 21

252. Article 21(1) and (2) of the Constitution provides that "All citizens shall enjoy freedom of assembly and association and licensing of assembly and association shall not be recognized.". Both juristic persons and natural persons are assured of freedom of assembly. It is also guaranteed to foreigners in the Republic of Korea.

253. Freedom of assembly shall not be violated by any of the State agencies. The violation of that freedom by a private person is also strictly prohibited. Article 3(1) of the Act Concerning Assembly and Demonstration provides that no person may disturb a peaceful assembly or demonstration by means of violence, intimidation or any other means and Article 3(3) also provides that the sponsor of an assembly or demonstration may, upon finding that there is a possibility of interference with the peaceful assembly or demonstration, notify the police and request protection.

254. The right of assembly is subject to certain restrictions when it conflicts with legal interests or fundamental rights of others, because the exercise of the right has a great impact on public order. First of all, an assembly or a demonstration should be peaceful and it should be carried out without violating Constitutional order, the rights of others and the morals of society. While the former Act Concerning Assembly and Demonstration prohibited assembly or demonstration which might have caused substantial social instability, the amended Act has narowed the scope of restriction and prohibits an assembly or a demonstration designed to achieve the purpose of a political party dissolved by the decision of the Constitution Court, or an assembly or a demonstration which would apparently cause a direct threat to the public peace due to its violent nature.

Restriction on freedom of assembly

255. Article 21(2) of the Constitution prohibits any requirement of a licence for the exercise of freedom of assembly. However, requiring notification of an assembly or demonstration for administrative purposes does not violate the said provision. In addition, the notification of an assembly or demonstration is considered as inevitable requirement in order to minimize the inconvenience of the general public and protect public facilities and avoid disruption caused by multiple assemblies occurring in one place.

Notification of outdoor assembly or demonstration

256. Any person who intends to sponsor an outdoor assembly or demonstration shall submit a written notice to the chief of the district police station 48 hours prior to the outdoor assembly or demonstration, describing therein its purpose, date, time, place and estimated number of participants, etc. (Act Concerning Assembly and Demonstration, Art. 6(1)):

(a) In case a planned outdoor assembly or demonstration violates the restrictions on time or places, or the notice thereof does not contain the required supplementary information, the chief of police station who has received the notice may notify the sponsor within 48 hours after receipt of the notice that the assembly or demonstration is prohibited (Act Concerning Assembly and Demonstration, Art. 8(1)).

(b) A sponsor of an assembly or a demonstration may, within 72 hours after the receipt of the notice of prohibition, file an objection thereto to the mayor of Seoul City, mayor of a major city or governor of the province who has jurisdiction over the police district that issued the prohibition notice. The mayor or governor shall rule on such objection within 24 hours after receipt of the objection. A petitioner who contests the ruling may file an administrative lawsuit to the High Court which has jurisdiction over the ruling administrative agency (Act Concerning Assembly and Demonstration, Art. 9).

Prohibited time and places for outdoor assembly and demonstration

257. No person may hold an outdoor assembly or demonstration before sunrise or after sunset unless the sponsor has designated a caretaker of the assembly or demonstration to maintain order and has notified the relevant authorities of the assembly or demonstration (Act Concerning Assembly and Demonstration, Art. 10). When it is deemed necessary for regulating the traffic, an assembly or a demonstration, which is to be held on main streets of major cities may be prohibited. Prohibition is not allowed if the sponsor of an assembly or a demonstration has designated a caretaker who will march with the participants to maintain order (Act Concerning Assembly and Demonstration, Art. 12).

258. There shall be no restrictions on assembling relating to academic research and study, arts, sports events, religious services, rituals, fraternization, entertainment, marriages, funerals, ancestral worship, and national celebrations (Act Concerning Assembly and Demonstration, Art. 13).

Prohibition of assembly or demonstration to protect public health

259. A mayor or governor may restrict or prohibit an assembly or demonstration when it is necessary for the prevention of first-class communicable diseases (Communicable Disease Prevention Act, Art. 39(1-2)). The above-mentioned restrictions on assembly are required for public safety, public order and the protection of rights and freedoms of the citizens. Thus, these restrictions are not inconsistent with article 21 of the Covenant.

Article 22

Paragraph 1

260. The Constitution guarantees freedom of association in Article 21 (all citizens shall enjoy freedom of association), Article 8 (political parties) Article 20 (religious groups) Article 22 (academic and art associations) and Article 33 (labour unions).

261. Freedom of association is guaranteed to all persons, i.e. citizens, foreigners and legal corporations.

262. Freedom of association includes freedom to form, participate in and to withdraw from an association.

Restriction on freedom of association

263. Article 21(2) of the Constitution prohibits any requirement of a licence for the exercise of freedom of association. However, freedom of association may be subject to restrictions in accordance with the general principle of restrictions on fundamental rights provided for in Article 37(2) of the Constitution. In the case that the President issues an emergency order (Constitution, Art. 76) or martial law is declared (Martial Law Act, Art. 9(1)), restrictions may be imposed by the emergency order or the special measures taken by the martial law commander.

264. Although freedom of association should be guaranteed to the full extent without any regard to the purpose of associations, illegal associations such as anti-State organizations (National Security Law, Arts. 2, 3, 7(3)) and criminal organizations (Criminal Code, Art. 114) are prohibited.

Labour union of public officials

265. (a) Article 8 of the Labour Union Act guarantees that employees (who live on wages, salaries and/or other income) may freely organize or join labour unions. However, the employers (the owner or the manager of a business or the person who acts for the owner on matters related to the employees) or persons who always act for the benefit of the employer cannot organize or join labour unions (Labour Union Act, Art. 3(1)).

(b) Article 33(2) of the constitution provides that only those public officials who are designated by law shall have the right to association, collective bargaining and collective action. In accordance with this provision, the Labour Union Act and the Public Officials Law place restrictions on the exercise of labour union-related rights by public officials. Public officials and teachers or professors of public and private schools, colleges and universities are prohibited from organizing or joining labour unions (Public Officials Law, Art. 66, Local Public Officials Law, Art. 58, Private School Act, Art. 55). However, public officials who perform physical labour, such as postmen, labourers in the railroad service and other labourers in the Ministry of Communication, the Office of National Railroads and the National Medical Centre may organize or join labour unions. The main reasons for these restrictions are that public officials have a special duty to serve the entire people, that they are responsible for the management of the State and that their collective actions affect all citizens. Therefore, the Korean Government is of the view that labour rights of public officials should be reviewed in the context of the benefit of all citizens and the development of the State.

(c) Due to the reasons mentioned in paragraph 265(b), the Korean Government has made a reservation with respect to article 22 of the Covenant.

(d) In addition, public officials such as members of the armed forces, policemen, prison officers and fire fighters are not entitled to enjoy labour rights. (Members of the Armed Service Rules, Art. 38, Police Officer's Service Rules, Art. 12, Public Officials Law, Art. 66, Public Officials Service Rules, Art. 28).

(e) Article 33(3) of the Constitution also provides that the right to collective action of workers employed by important defence industries may be either restricted or denied under the conditions prescribed by law. These restrictions are imposed in order to protect the interests of the nation against individual interests and thus these limitations are not in violation of paragraph 2 of article 22 of the Covenant.

Privileges of a political party

266. Political parties are vested with various privileges. Under the Constitution, a political party shall be dissolved in accordance with the decision of the Constitution Court only when the purposes or activities of the political party are contrary to the fundamental democratic order (Art. 8(4)). Political parties may be provided with operational funds by the State (Art. 8(3)). In this connection, the Political Funds Act has been legislated in order to contribute to the development of democracy by guaranteeing a sufficient supply of political funds to the parties, and by making the receipt and disbursement of political funds open to public scrutiny (Arts. 4, 5-10, 11, 17-21). These privileges of the political parties are guaranteed in order to protect their inherent political function.

267. The Republic of Korea is not a Member of the International Labour Organisation (ILO). However, the Korean Government has continued to make efforts to join the Organisation and has, since 1982, been participating, as an observer State, in the works of ILO. The Korean Government believes that it will join ILO in the near future.

Dissolution of labour union

268. A labour union shall be dissolved for one of the following reasons only:

(a) Occurrence of an event which dissolves the labour union as set forth in its by-laws;

(b) Extinction due to a merger or a division;

(c) A resolution for dissolution adopted at a general meeting or a council of delegates by the affirmative vote of two thirds or more of the union members or delegates present at the meeting or council where two thirds or more of the entire union members or delegates are present;

(d) In the case where the labour union has no officer and has not carried out any activity for more than two years.

Major reasons for the dissolution of a labour union in Korea are the closure of the company and the resolution of dissolution.

Restriction on labour disputes

269. The provisions of labour laws in most countries, particularly those relating to collective activities are simple in spite of their complicated contents. Therefore, recourse has often been made to opinions of scholars and decisions of the court in order to determine whether or not the activities of a labour union are justified.

270. In the Republic of Korea, where the history of the labour movement is relatively short and decisions by the court on the activities of labour unions are rare, opinions of scholars have usually been referred to in the settlement of conflict arising out of differences in the interpretation of labour laws. However, the settlement of disputes is sometimes impossible because both parties insist on adopting the interpretation favourable to them.

271. Thus, the Korean Government (Ministry of Labour) has published and distributed a booklet entitled "A Guide for Better Understanding of Labour Rights" in January 1990. The book provides detailed explanations on the object and scope of collective bargaining and the restrictions on labour disputes.

272. The Korean Government is making every effort to enhance public awareness of the rights and responsibilities of labour unions and their members.

Ex officio arbitration under the Labour Dispute Adjustment Act

273. If settlement of labour disputes, which are closely related to the national economy and the daily life of citizens, were entrusted entirely to the parties to the disputes, damage and inconveniences could affect not only the parties themselves, but also all citizens, and such labour disputes could also undermine the development of the national economy and threaten public interests.

274. Under the Labour Dispute Adjustment Act, the arbitration of a labour dispute in the public service sector shall be conducted if the labour committee decides to refer a dispute to arbitration ex officio or upon request of an administrative agency. Any act of dispute shall be prohibited for 15 days from the date of referral. Since the purpose of the arbitration is to prevent the abuse of labour rights by the parties in the public service sector, the Labour Dispute Adjustment Act does not violate the provisions relating to labour rights in the Constitution.

275. The applicability of ex officio arbitration has been greatly narrowed due to two amendments to the Act (31 September 1986 and 28 November 1987) which excluded Government invested enterprises, research projects sponsored by the Government, coal mining, industrial fuel business and securities transaction business from the public service sector.

276. On 16 March 1989, a lawsuit requesting the adjudication of the constitutionality of the ex officio arbitration system was brought to the Supreme Court in connection with the strike by subway workers. The Supreme Court decided that the labour dispute acts of the employees in the public service sector are subject to inherent restrictions. Since Article 31 of the Labour Dispute Adjustment Act legislates these inherent restrictions and does not violate the labour rights provided for in the Constitution, it was held to be constitutional (Supreme Court Decision of 15 May 1990, 90-KA-33).

Article 23

Protection of the family

Paragraph 1

277. In order to guarantee a democratic marriage and family system, Article 36(1) of the Constitution provides that marriage and family life shall be entered into and maintained on the basis of individual dignity and equality of the sexes and that the State shall do its utmost to achieve these goals.

278. Since Article 36(1) of the Constitution binds all State agencies without any further legislation, remedies may be obtained under this provision in the case that the State interferes with a person's marriage and family life.

279. Furthermore, the Civil Code was amended so as to abolish the patriarchal family system, to enforce the principle of individual dignity and equality of the sexes guaranteed by the Constitution and to guarantee the welfare of the family (proclaimed on 13 January 1990 and enforced from 1 January 1991).

280. In 1988, the Government planned to establish the "mother-child self-support facilities" to accommodate families headed by a mother who did not achieve economic independence after being discharged from the mother-child health care facilities. According to this plan and after a public discussion held in June 1988, the Mother-Child Welfare Act was legislated in April 1989 in order to support families headed by married or unmarried mothers. The Act became effective in July 1989.

Age requirement for marriage

Paragraph 2

281. Under the Civil Code, any adult may freely enter into a matrimonial engagement (Art. 800) and a man over 18 years of age and woman over 16 years of age may enter into matrimony (Art. 807). A minor shall obtain the consent of his parents in order to enter into matrimony (Art. 808).

Marriage System

Paragraph 3

282. The Korean marriage system guarantees monogamy based on the free will of each party and prohobits concubinage and bigamy. According to Article 815 of the Civil Code, a marriage shall be based on the free will of each party and any marriage without the consent of the parties shall be null and void. In addition, an annulment of a marriage may be sought if the declaration of intention to enter into a marriage was induced by fraud or duress (Civil Code, Art. 816).

Rights of spouses

Paragraph 4

283. At the time of accession to the Covenant, the Republic of Korea made a reservation with respect to paragraph 4 of article 23 of the Covenant, since the Civil Code prescribes the rights and responsibilities of spouses in favour of the husband during marriage and after its dissolution. However, as the discriminatory provisions were revised by the amendments to the Civil Code, which entered into force on 1 January 1991, the reservation was withdrawn on 15 March 1991.

284. The amendments to the Civl Code provide for equal rights and duties of spouses during marriage and after its dissolution:

(a) Rights and duties during marriage

The amendments guarantee the quality of spouses during marriage through the following Articles: Duty to Cooperate (Art. 826), Joint Liability for Obligations with respect to Household Matters (Art. 832), Joint Responsibility for Living Expenses (Art. 833) and Joint Exercise of Parental Authority with respect to a Minor Child (Art. 909).

(b) Rights and duties after the dissolution of marriage

(i) In the case of divorce, the parties shall determine, by an agreement, all matters concerning their children. If the parties are unable to reach an agreement, the Family Court may, upon request by a party, decide all matters relating to the children (Civil Code, Art. 837).

(ii) Under the amendments to the Civil Code, parents who do not raise their children may visit, call and write to their children (Civil Code, Art. 837-2).

(iii) In the case of divorce, a party may seek the division of joint property according to the party's contribution to the joint property (Civil Code, Art. 839-2).

Article 24

Prohibition of discrimination against children

Paragraph 1

285. Article 11(1) of the Constitution prohibits any discrimination against children by providing that no citizen shall be discrimated against in political, economic, social or cultural life on account of sex, religion or social status.

286. The term "child" means a person under 18 years of age under the Child Welfare Act and the Convention on the Rights of the Child. However, a minor under the Civil Code is a person under 20 years of age.

287. The population under 18 years of age was 14,620,000 in 1990 and constitutes 34 per cent of the entire population of Korea. The number of children is declining due to the Government's policy on population and family planning.

(Unit: thousand children)

1980	1990	2000
15 621 (40.7%)	14 620 (34.1%)	12 870 (27.5%)

* The number in the bracket is the population percentage of children in the entire population.

Institutional framework for the protection of children

288. The Korean Government has implemented the following policies for the protection of children:

(a) The Child Welfare Act was enacted in order to guarantee the welfare of children so that they are born safely and are brought up in good health (Art. 1).

(b) Article 18 of the Child Welfare Act provides that no person shall hurt, mistreat or exploit a child or have a child perform or mediate an obscene act. Any person who violates this provision shall be punished (Art. 34).

(c) 5 May has been designated as "Children's Day" a legal holiday, in an effort to enhance the nationwide affection for children (Art. 4).

(d) The Children's Charter of the Republic of Korea was legislated in 1957 (and amended in 1988) and the Charter prescribes the requisites for the welfare of children.

State agencies concerned with the welfare of children

289. The Child Welfare Bureau of the Ministry of Health and Social Affairs and the Family Welfare Bureau of local governments are responsible for implementing the policies on the welfare of children.

Protective measures for children who require protection

290. Articles 2 and 3 of the Child Welfare Act provide that the term "child to be protected" means a child to be protected under this Act if the child is lost, abandoned or separated from his guardian, the guardian is unsuitable for or incapable of bringing up the child, or in other cases prescribed by law. Protective measures under the above provisions are as follows:

(a) In order to prevent the separation of children from their parents, 51 child guidance clinics with 380 professional counsellors were established in the cities, provinces and factory areas. Child guidance clinics accommodate children previously living in poor conditions in welfare centres or aid them through programmes of an adoption or job guidance. Furthermore, 5,400 Child Welfare Committee members are counselling children at each level of towns and villages.

(b) Children, who are separated from their parents on account of divorce or industrial accidents, are adopted, placed in foster care or accommodated in welfare centres, and the State and local governments subsidizes the costs of medical treatment, education, and raising the children (Child Welfare Act, Art. 27). As of 1990, 23,450 children were accommodated at 278 protection centres.

(c) In order to find missing children, there are child finding centres and 182 telephone lines were set up for notification of missing children.

291. The Government subsidizes the expenses needed for a normal life, including medical treatment and education for those children who head a family due to illness, death or other difficulties of their parents. At the end of 1990, the Government was supporting 13,778 such children.

Education of Children

292. In accordance with Article 31(2) of the Constitution, Article 8 of the Education Act provides "all citizens shall have a right to receive six years of primary education and three years of secondary education (para. 1), and citizens who have children under their protection have a duty to educate them in accordance with Paragraph 1 (para. 2), and the State shall enforce compulsory education as provided for in Paragraph 2 and shall take all necessary measures to secure the facilities therefor (para. 3)". In addition, Article 913 of the Civil Code provides that parents or legal guardians must protect, educate and raise their children.

Criminal responsibility

293. Under Article 9 of the Criminal Code, a person under 14 years of age shall not be punished for his act. The age of a criminal is a critical factor in determining punishment (Criminal Code, Art. 51) and if a minor has not committed a felony, "protective disposition" under the Juvenile Act is usually ordered rather than a sentence of penal punishment.

Protection of working children

294. Article 32(5) of the Constitution provides that special protection shall be accorded to working children. In accordance with this provision, the Labour Standards Act and the Child Welfare Act set forth special measures to protect working children:

(a) A person who has not reached 13 years of age shall not be employed (Labour Standards Act, Art. 50).

(b) No minor under 18 years of age shall be authorized to engage in any work which is morally detrimental or harmful to health (Labour Standards Act, Art. 51).

(c) Working hours for minors between 13 and 18 years of age shall not exceed 7 hours a day and 42 hours a week. (In the case of an adult, it shall be 8 hours a day and 44 hours a week) (Labour Standards Act, Art. 55).

(d) No minor under 18 years of age shall be authorized to work between the hours of 22:00 and 6:00 or on holidays (Labour Standards Act, Art. 56).

(e) An employer shall not employ a minor under 18 years of age to work inside a pit (Labour Standards Act, Art. 58).

(f) A person who regularly employs more than 30 minors under 18 years of age shall establish an education facility (Labour Standards Act, Art. 63).

(g) A person shall not have a child under 14 years of age perform acrobatics to entertain an audience and shall not employ a child under 14 years of age in a bar or in other entertainment business (Child Welfare Act, Art. 18, items 3 and 4).

Legal status of illegitimate children

295. Illegitimate children were accorded unfavourable treatment due to the traditions of Korean society where monogamy and legal marriage were respected. However, the Korean Government has tried to eliminate discriminatory treatment toward illegitimate children with respect to their legal status and property rights. The Civil Code does not distinguish an illegitimate child from a legitimate one except in the succession order of the family headship (Arts. 985, 989).

Adoption of a minor

296. In order to adopt a minor, who has neither a parent nor any other lineal ascendants, it was sufficient that the person who wishes to adopt the minor obtain the consent of the minor's guardian under the old Civil Code. However, the amended Civil Code requires the approval of the Family Court with regard to the consent of guardian in order to prohibit the exploitation of the adopted minor (Civil Code, Art. 871). A guardian shall obtain the permission of the Family Court, if he adopts his ward (Civil Code, Art. 872).

Guardian of a minor

297. If there is no person with parental authority over a minor or if a person in parental authority is unable to exercise the right of representation with respect to the juristic acts or the right of management of the property of a minor, a guardian shall be appointed for the minor. The qualification is set forth in Article 937 of the Civil Code. Under the Civil Code, the guardian of a minor shall have the same rights and duties as a person who has parental authority with respect to protection, fostering and education of a minor (Art. 945).

298. In order to participate fully in the efforts of the United Nations to protect children, the Republic of Korea signed the Convention on the Rights of the Child on 25 September 1990 and the Korean Government will ratify it in the near future.

Paragraph 2

299. Article 49 of the Family Registration Act provides that a birth report containing the name, date and place of birth of a new born child shall be filed within one month from the date of birth.

300. For abandoned infants, the chief of district shall determine the child's name and the permanent domicile with the permission of the Court and shall record them in the Family Register (Family Registration Act, Art. 57).

Nationality of a child

Paragraph 3

301. Under Article 2 of the Nationality Act, every child including an illegitimate child, an abandoned child and a child of a person without nationality shall acquire Korean nationality if born in the Republic of Korea.

Article 25

The sovereignty of the Republic of Korea

302. Article 1(2) of the Constitution states that the sovereignty of the Republic of Korea shall reside in the people and all state authority shall emanate from the people.

Right to vote

303. Article 24 of the Constitution provides that all citizens shall have the right to vote under the conditions prescribed by law. The Constitution provides for the right to vote for the President (Art. 67(1)), the members of the National Assembly (Art. 41(1)) and the members of local councils (Art. 118(2)). Article 8 of the Presidential Election Act provides that citizens who are 20 years of age or older shall have the right to vote.

304. The political rights, such as the right to vote, the right to be elected, and the right to hold a public office are accorded only to Korean nationals in accordance with the principle of sovereignty of the Korean people.

Right to hold a public office

305. Article 25 of the Constitution states that all citizens shall have the right to hold a public office under the conditions prescribed by law. The right to hold a public office includes the right to perform public duty as a member of the executive, the legislature, the judiciary and the local governments. In this regard, the right to hold a public office is broader than the right to be elected. However, in order to hold certain public offices, citizens must be qualified for the office as prescribed by law. This practice is in conformity with article 25, subparagraph (c) of the Covenant.

306. The National Assembly Members Election Act (Art. 9) and the Local Council Members Election Act (Art. 9) stipulate that citizens who are 25 years of age or more, shall have the right to be elected. However, a person who has been declared incompetent does not have the right to be elected to the National Assembly or the local council (Arts. 11, 12 of the said Acts). The Presidential Election Act provides that citizens, who are 40 years of age or more, shall be eligible to be elected as the President (Art. 9). However, a person who is declared incompetent shall not have the right to be elected to the Presidency (Arts. 11, 12).

Universal, equal, direct and secret voting

307. With respect to the voting system, the Constitution upholds the principal of universal, equal, direct and secret voting (Art. 41(1), Art. 67(1)). Under the constitutional principle, the election acts stipulate that the vote shall be cast directly or by mail, that there shall be one vote per person and that the name of the voter shall not be indicated on the vote (Presidential Election Act, Art. 94, National Assembly Members Election Act, Art. 100, Local Council Members Election Act, Art. 97). In addition, the secrecy of the ballot shall be guaranteed (Presidential Election Act, Art. 111, National Assembly Members Election Act, Art. 117, Local Council Members Election Act, Art. 114).

Restrictions on political rights

308. Under Article 13(2) of the Constitution, no restriction shall be imposed upon the political rights of any citizens by means of retroactive legislation. The Political Party Act provides that citizens under 20 years of age, public officials, certain teachers and journalists are prohibited from becoming founders or members of a political party (Arts. 6, 17). Under Article 42 of the Political Party Act, when a political party is dissolved by a decision of the Constitution Court, any representative or executive member of the dissolved party shall not establish a political party with the same or similar party platform (or basic policy) as that of the dissolved party.

Article 26

309. All citizens shall be guaranteed human worth and dignity and shall be equal before the law (Constitution, Art. 11(1)). All citizens shall have the right to pursue happiness and it shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals (Constitution, Art. 10). In connection with these provisions, Article 31 of the Constitution provides that the citizens shall have the right to receive an education corresponding to their abilities and a compulsory education, which is free of charge. Under Articles 32 and 33 of the Constitution, the right to work is guaranteed.

310. In accordance with the above-mentioned provisions of the Constitution, the Korean Government has been doing its utmost to ensure equal and effective protection of all citizens by improving social security and the social welfare system. In particular, as has been explained in this report in the description of article 2 of the Covenant, the Korean Government has been concentrating its efforts on persons who are in socially weak positions, such as persons with disabilities, children and the aged (see para. 32).

311. The constitutional principle of equality before the law and the principle of equal protection of the law - referred to several times in this report - reflect the general precepts of article 26 of the Covenant.

Article 27

312. In Korea, no person is denied the right to enjoy his own culture, to profess and practice his own religion or to use his own language. However, ethnic, religious, linguistic or cultural minorities do not exist in the Republic of Korea.